SUPREME COURT OF THE UNITED STATES.

No. 228.

THE BARQUE AMERICAN UNION, N. C. AND H. J. WINSLOW, CLAIMANTS, APPELLANTS,

VS.

ASA E. CURTIS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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4 Pleas in the District Court of the United States for the northern district of Illinois, held at the United States court-room, in the city of Chicago, in the district aforesaid, before the Hon. David Davis, one of the justices of the Supreme Court of the United States, presiding, and the Hon. Thomas Drummond, judge of the District Court of the United States for the northern of Illinois, associate judges of said Circuit Court, on Monday, the fourth day of November, in the adjourned October term of said court, in the year of our Lord one thousand eight hundred and sixty-seven, and of our independence the ninety-second year.

WILLIAM H. BRADLEY, *Clerk.*

ASA E. CURTISS
vs.
THE BARQUE AMERICAN UNION. } In admiralty.

NORTHERN DISTRICT OF ILLINOIS, *ss*:

5 Be it remembered that on the eighteenth day of August, in the year of our Lord one thousand eight hundred and sixty-six, came Nathan C. Winslow and Hezekiah J. Winslow, claimants of the barque American Union, by Robert Rae, esq., their proctor, and filed in said Circuit Court of the United States for the northern district of Illinois, at Chicago, in said district, their transcript of a record from the District Court of the United States for the northern district of Illinois, in the above-entitled cause, which said transcript is in the words and figures following, to wit:

6 *Transcript from Dist. Court.*

Pleas in the District Court of the United States for the northern district of Illinois, held at the United States court-room, in the city of Chicago, in the district aforesaid, before the Hon. Thomas Drummond, judge of said District Court, on Saturday, the twenty-first day of July, in the July term of said court, in the year of our Lord one thousand eight hundred and sixty-six, and of our independence the ninety-first year.

WM. H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss*:

7 Be it remembered that on the eighteenth day of July, in the year of our Lord one thousand eight hundred and sixty-five, came Asa E. Curtis, libelant, by J. N. Barker, esq., his proctor, and filed in the office of the clerk of the District Court of the United States for the northern district of Illinois, at Chicago, in said district, his libel against the barque American Union, respondent, and also at the same time filed his stipulation for costs in said entitled cause. Which said libel and stipulation are in the words and figures following, to wit:

In admiralty.

To the Hon. Thomas Drummond, judge of the District Court of the United States for the northern district of Illinois:

Asa E. Curtis, of the said northern district of Illinois, sole owner of the schooner J. C. Fremont, hereinafter mentioned, exhibits this his libel against the barque American Union, (whereof Wolvin is or lately was master,) now lying in the port of Chicago, in the northern district of Illinois aforesaid, and within the admiralty and maritime jurisdiction of this honorable court, her sails, rigging, boats, tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein in a cause of collision, civil and maritime, and thereupon the said Asa E. Curtis doth allege, and articulately propound as follows, to wit:

8 First. That said schooner J. C. Fremont is a vessel of more than twenty-one tons burthen, to wit, of the burthen of one hundred and fifty-eight tons, or thereabouts, and at the time when the cause of action hereinafter mentioned and set forth arose, was enrolled and licensed for the coaling trade, and was employed in the business of commerce and navigation between ports and places in different States and Territories of the United States, upon the lakes and navigable waters connecting the said lakes.

Second. That on the fourteenth day of June, A. D. 1865, the aforesaid schooner, being tight, staunch, and well manned and provided, sailed from the port of Chicago, in the State of Illinois, with a light cargo, to wit, 3 bails of hay, 10 bags of meal, 1 jar butter, 1 barrel of beef, and 1 barrel of pork, on a voyage bound for the port of Fish Creek, in the State of Wisconsin.

Third. That during said voyage, to wit, on or about twelve and a half o'clock a. m. on the morning of the 18 day of June, A. D. 1865, there being a stiff breeze of 10 to 11 knots an hour and very foggy, schooner Fremont kept on her course until about 2 o'clock a. m. The wind about south southeast, when she was under easy canvass; she was hauled by the wind and was steering east southeast, and

9 kept a man blowing the fog horn every few seconds; a few minutes before five a. m. of that morning aforesaid, when about 7 or 8 miles off Bailey's harbor, while still laying by the wind in the course aforesaid, waiting for the fog to clear up, and still blowing the fog-horn every three or four seconds, a bell was heard by persons in charge of the schooner J. C. Fremont, in the distance, and all hands called on deck of Fremont, and all at their posts, and a vessel was seen coming down on said schooner Fremont under crowded canvas, (and sailing at the rate of eleven knots an hour,) by the those in charge of the schooner for 2,000 feet before she struck the schooner; and when the barque was first visible to the persons in charge she was hailed by them, and continued to be so hailed until she ran her bow into and half way through the schooner J. C. Fremont, cutting her through to the centre board. The vessel proved to be the barque American Union, bound from Chicago with a cargo of oats; she was sailing north by east, ½ east, wind on her starboard quarter, under full canvas

and sailing free with the wind eleven knots an hour when she struck the Fremont; that from the time said barque American Union was first discovered approaching the Fremont, it was not possible
10 to do or cause anything to be done by those on board the said schooner to prevent said collision; that as soon as the barque hove in sight it became inevitable that there would be a collision unless means were resorted to by those in charge of the barque to prevent the threatened disaster, which could have been done when within hailing distance; the barque was hailed from the Fremont and requested to put her below to port, which request was often repeated, but it was not done; the barque kept straight on her course, and within three minutes after she was first seen by them on board the schooner, the barque struck the said schooner about ten feet forward of the main rigging, and run her bow into the said schooner full thirteen feet, making herself fast in the schooner; that the schooner immediately began to fill with water, and as soon as she was got loose from the bow of the barque she sunk, and was with her cargo totally lost, her officers and crew with difficulty saving their lives by climbing on to the barque by her rigging.

Fourth. That the said barque by which said damage has been done proved to be the barque American Union, aforesaid, under the command of Wolvin, master thereof, and being of about five hundred and ten tons burthen, bound on a voyage from Chicago to Buf-
11 falo; that at the time when she was first discovered from the schooner Fremont it was daylight, and although there was a heavy [a heavy] fog the schooner Fremont could have been distinctly seen in time to have prevented a collision if the said barque had kept a good lookout, and could have seen the schooner at least 2,000 feet, and in season to have enabled her to give way for the said schooner as she was bound to do, and thereby prevent a collision; that she was sailing under a crowd of canvass at a rate no prudent master should have done during so thick fog.

Fifth. That if at the time said barque was first hailed from the Fremont, and thenceforth, she had had a proper watch on deck, the warning given from the Fremont as hereinbefore mentioned must have been distinctly heard on board the barque in season to have enabled her by putting her helm to port to pass the Fremont in safety, but instead of so doing, the said barque kept on her previous course, although she was sailing at the rate of 11 knots an hour, and her captain admitted that her helm had not been put aport; that the barque American Union was out of her course and not where she should have been.

12 Sixth. That at the time when the danger of a collision between the said vessels was first perceived as aforesaid from the schooner, it was impossible for the schooner to get under way or to get out of the way of the said barque, nor were there any means to which she could have resorted for that purpose, she being close hauled by the wind and with easy canvas.

Seventh. That at the time of the aforementioned loss of the said schooner J. C. Fremont and her cargo, the libellant was the true and

lawful owner of the said schooner and of her said cargo, and that said schooner was of the value of seven thousand dollars, and the said cargo was of the value of one hundred and sixteen dollars or thereabouts, and that by reason of the careless, reckless, negligent, unskillful, and improper management of the said barque American Union, and of the collision thereby occasioned of the said barque with the said schooner J. C. Fremont, the libellant hath sustained damage to the amount of seven thousand one hundred and sixteen dollars, or thereabouts, for which he claims reparation in this suit.

Eighth. That all and singular the premises are true, wherefore the libellant prays that process in due form of law may issue against the said barque American Union, her anchors, chains, boats, tackle,
13 apparel, and furniture, and that this honorable court will pronounce for the damages aforesaid, and decree the same to be paid with costs, and for such other and further relief and redress as to right and justice may appertain and the court is competent to give in the premises.

ASA E. CURTISS,
J. N. BARKER,
Libellant's Proctor.

Sworn to and subscribed before me this 18th day of July, A. D. 1865.

WM. H. BRADLEY, *Cl'k.*

Endorsed: Filed July 18th, 1865. Wm. H. Bradley, cl'k.

District Court, August term, A. D. 1865.

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Whereas a libel was filed in this court on the 18th day of July, A. D. 1865, by Asa E. Curtiss, against the barque American Union, boats, tackle, apparel, and furniture, for the reasons and causes in the said libel mentioned, and praying that the same may be condemned and sold to answer the prayer of the libellant, and the said libellant and Joseph E. Bates, surety, the parties hereto hereby consenting and agreeing that in case of default or contumacy on
14 the part of the libellant or his surety, execution may issue against their goods, chattels, and lands, for the sum of two hundred and fifty dollars.

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the stipulators undersigned shall be and are bound in the sum of two hundred and fifty dollars, conditioned that the libellant above named shall pay all such costs as shall be awarded against them by this court, or in case of appeal by the Appellate Court.

ASA E. CURTIS.
JOSEPH E. BATES.

Taken and acknowledged this 18th day of July, A. D., 1865, before me.

WM. H. BRADLEY, *Cl'k.*

NORTHERN DISTRICT OF ILLINOIS, *ss* :

Joseph E. Bates, party to the above stipulation, being duly sworn, depose and say, that he resides in the northern district of Illinois, and is worth the sum of five hundred dollars over and above all his debts.

ASA E. CURTIS.
JOSEPH E. BATES.

Sworn this 18th day of July, A. D. 1865, before me.
WM. H. BRADLEY, *Cl'k.*

15 Endorsed: Filed July 18th, A. D. 1865. Wm. H. Bradley, clerk.

On the same day, to wit, the 18th day of July, A. D. 1865, a monition issued out of said clerk's office against said respondent, which said monition, together with the marshal's return thereon, and the bond for the release of said respondent, returned with said monition, are in the words and figures following, to-wit:

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the marshal of the northern district of Illinois, greeting:

Whereas a libel hath been filed in the District Court of the United States, in and for the northern district of Illinois, on the 18th day of July, in the year of our Lord one thousand eight hundred and sixty-five, by Asa E. Curtiss, against the bark American Union, her boats, tackle, apparel, and furniture, for reasons and causes in said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons having
16 or pretending to have any right title or interest therein may be cited to appear and answer all and singular the matter in said libel articulately propounded, and that this court would be pleased to propound for the sum of seven thousand one hundred and sixteen dollars, the damages alleged in said libel, besides costs of suit, you are therefore commanded to attach the said barque American Union, her boats, tackle, apparel, and furniture, and to detain the same in your custody until the further order of this court respecting the same, and to give due notice by publication in some daily newspaper printed in the city of Chicago, for fourteen days previous to the day of trial, and by notice posted up in the most public manner, for the space of fourteen days, at or near the place of trial of such seizure and libel, to all persons claiming the said barque, her boats, tackle, apparel and furniture, or knowing, or having anything to say why this court should not pronounce against the same, according to the prayer of the said libel, and that they be and before the said court to be held in and for the northern district of Illinois at the United States court-room, in the city of Chicago, in said dis-

17 trict, on the first Monday in August next, if that be a day of jurisdiction; if not, then on the first day of the jurisdiction thereafter, at 10 o'clock in the forenoon of that day, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return, together with this writ.

Witness the Honorable Thomas Drummond, judge of the said court, this 18th day of July, in the year of our Lord one thousand eight hundred and sixty-five, and of our independence the 90th year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

[50-cent U. S. rev. stamp, cancelled.]

NORTHERN DISTRICT OF ILLINOIS, *ss*:

Know all men by these presents that I have appointed, and by these presents do appoint, Augustus B. Cotes my true and lawful deputy to execute the annexed writ, (Asa E. Curtiss *vs.* Barque American Union, &c.,) and to make true return thereon, according to law.

[SEAL.] J. R. JONES,
United States Marshal of the Northern District of Illinois.

Under and by virtue of the within writ, I did, on the 18th
18 day of July, A. D. 1865, attach the barque American Union, therein named, her boats, tackle, apparel, and furniture, and did detain and hold the same in my custody until the 20th day of July, in the year aforesaid, on which last above-mentioned day the claimant thereof delivered to me a bond duly executed and approved, according to law, which is herewith filed, and I thereupon released the said barque her boat, &c., from such custody. I have not given the notice which is in and by said writ directed to be given, because I was ordered not to do so by the proctor for the libellant named therein.

J. R. JONES, *U. S. Marshal.*
By A. B. COTES, *Special Deputy.*

Endorsed: Filed this 13th day of Oct., A. D. 1865. Wm. H. Bradley, clerk.

Know all men by these presents, that Hezekiah J. Winslow, of Buffalo, as principal, and Wiley M. Egan, of Chicago, county of Cook, and State of Illinois, as sureties, are held and firmly bound unto Asa E. Curtis, in the penal sum of fourteen thousand to be paid unto the said Asa E. Curtis, which payment well and truly to be made we bind ourselves, our heirs, executors and administra-
19 tors, jointly and severally firmly by these presents; sealed with our seals and dated at Chicago, the twentieth day of July, in the year of our Lord one thousand eight hundred and sixty-five.

Whereas in a certain cause civil and maritime, moved and prosecuted in the District Court of the United States of America for the northern district of Illinois, on behalf against the barque American

Union, her boats, tackle, apparel, and furniture, a warrant of arrest has been issued out of the said court against the said barque, her boats, tackle, apparel, and furniture, in virtue of which said warrant the said barque, her boats, tackle. apparel, and furniture, have been arrested by Augustus B. Cotes, a special deputy of the marshal of the United States for the northern district of Illinois, and are now in the custody of the said marshal.

Now, therefore, the condition of this obligation is such, that if the above bounden Hezekiah J. Winslow, the claimant of said barque, her boat, tackle, apparel and furniture, shall well and truly abide and answer the decree of said court, in the aforesaid cause, then this obligation shall be void, otherwise it shall remain in full force and virtue.

[SEAL.] H. J. WINSLOW.
[SEAL.] W. M. EGAN.

20 Approved by—

J. N. BARKER,
Libellant's Proctor.

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

, being duly sworn, depose and say that resident of the northern district of Illinois, and that own property in said district subject to execution worth dollars over and above all just debts and liabilities.

Sworn and subscribed before me this day of A. D. 18 .

Endorsed: Approved, Thomas Drummond; and filed Oct. 13th, 1865. W. H. Bradley, cl'k.

And on this day, to wit, the 30 day of September, A. D. 1865, came Nathaniel C. Winslow and Hezekiah J. Winslow, by their proctor, and filed in said clerk's office their exception in said cause, which said exception is in the words and figures following, to wit:

In the United States District Court for the north. dist. Ill.

ASA E. CURTIS
vs.
THE BARQUE AMERICAN UNION. } In admiralty.

21 To the Honorable Thomas Drummond, judge of the United States District Court for the northern district of Illinois:

The exceptions of Nathan C. Winslow and Hezekiah J. Winslow, owners of the bark American Union, to the libel of Asa E. Curtis allege that the said libel is insufficient, as follows:

First exception. That it does not appear in said libel how fast said schooner C. J. Fremont was sailing at the time of the collision.

Second exception. That it does not appear in said libel what canvas said schooner had up at the time of said collision.

Third exception. That it does not appear in said libel in what direction said barque American Union was from the said schooner C. J. Fremont when first discovered by the crew of said schooner.

Fourth exception. That it does not appear in said libel what parts of each vessel first came in contact.

ROBERT RAE,
Proctor for Respondent.

Endorsed: Filed September 30th, 1865. W. H. Bradley, cl'k.

22 And on this day, to wit, the 12th day of July, A. D. 1866, came Nathan C. Winslow and Hezekiah J. Winslow, by their proctor, and filed in the office of the clerk of said court their answer in said entitled cause, and also at the same time filed their stipulation for costs in said cause, which said stipulation and answer are in the words and figures following, to wit:

District Court, term A. D. 18 .

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Whereas a libel was filed in this court on the day of , A. D. 18 , by Asa E. Curtis against the b'k American Union, boats, tackle, apparel and furniture, for the reasons and causes in the said libel mentioned; and whereas a claim has been filed in said cause by N. J. and H. J. Winslow and the said and R. Rae, suret., the parties hereto consenting and agreeing that in case of default or contumacy on the part of the claimant or suret. execution may issue against their goods, chattels and lands for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the stipulators undersigned shall
23 be and are bound in the sum of two hundred and fifty dollars, conditioned that the claimant above named shall pay all such costs as shall be awarded against by this court, or, in case of appeal, by the Appellate Court.

R. ROE.

Taken and acknowledged this 12th day of July, A. D. 1866, before me.

W. H. BRADLEY, *Cl'k.*

NORTHERN DISTRICT OF ILLINOIS, *ss*:

, part to the above stipulation, being duly sworn, depose and say, that reside in the northern district of Illinois, and worth the sum of five hundred dollars over and above all debts and liabilities.

Sworn this day of , A. D. 18 , before me.

Endorsed: Filed July 12th, A. D. 1866. W. H. Bradley, clerk.

To the Honorable Thomas Drummond, judge of the United States District Court for the northern district of Illinois, in admiralty:

24 The answer of Nathan C. Winslow and Hezekiah J. Winslow, owners of the bark American Union, in the matter of Asa E. Curtis against the said bark in a matter of collision, civil and maratime, allege as follows:

First. That said claimants and respondents admit the truth of the matters and things alleged in article I II of said libellant; as to each and every other article in said libel they deny the truth of the matters and things therein contained, and demand strict proof to be made of such matters as are well pleaded and are material in the premises.

Second. That for a full and complete answer to all and singular the matters articulately propounded to respondents in said libel, they allege the following to be the true and wholesome narrative of the incidents and circumstances connected with the accident whereby libellant lost his vessel at the time and place mnetioned in said libel: That on the morning of the 18th of June, A. D. 1865, the bark American Union, whereof respondents were at the time sole owners, was navigating the waters of Lake Michigan in the open lake and in the usual track of vessels bound down from Chicago

25 to the city of Buffalo, said bark being at the time bound on such voyage; that the weather was foggy and the wind was south by east; that the bark was heading north by east with the wind free; that said vessel, being one of the largest on the lakes, was well equipped with all necessary and proper instruments to warn all vessels that might be sailing near to her of her approach, either in the night time or in a fog; that she was found with an expensive and large bell, whose toll could be heard many miles and rung out a much louder sounding signal than could be made by a fog horn, and a bell which is much better than those used by vessels of similar class and dimensions; that she was officered by a skillfull and vigilant crew, actively and industriously engaged in the performance of their respective duty, with lookouts stationed forward, in the best place for a lookout on board said vessel, with no other occupation but to look out, and was actively and exclusively engaged at the time and before the collision in the business and duty of looking out.

That her fog-bell was kept constantly tolling, and every effort was made by those on board of her to give to every other vessel, whose crews were giving ordinary attention to their business, warning to

26 so navigate and steer as that no collision could occur; while at the same time every effort was made on board said bark to learn, at the earliest moment, the approach of peril, and to govern herself by the very best nautical rules to shun and avoid it.

That, on the contrary, those on board of the schooner were wholly reckless of their duty, and although they knew perfectly well that they were crossing at right angles the whole fleet bound between the two largest commercial ports on the lakes, while they were sailing on a course rarely ever traveled, they had no lookout or lights,

or took any other precaution, except at intervals to blow a fog horn of a small and insignificant size, uttering but a feeble and small noise.

That at about 5 o'clock on the morning of the said eighteenth day of June, when about 20 miles off Bayless Harbor, the bark, then proceeding at the rate of nine miles an hour, with all the watch on board forward, except the man at the wheel, three of the crew being on the topgallant foresail, and the mate on deck on the starboard side forward, the master on the quarter deck, with the usual and proper lights brightly burning, heading with the wind as aforesaid, the officers and crew of said bark discovered the schooner Fremont
27 five or six rods from them right ahead, a very little on the bark's lee bow, heading east, and going about six or seven miles an hour, with the jibs and foresail trimmed by the wind, and her mainsail off. So soon as she was discovered they heard the schooner's horn; the master of the bark ordered the wheel hard up, and before there was time to clear her the collision took place. That said collision did not take place through any fault of those in charge of the bark; and if there was any fault it was on the part of the servants or agents of the libellants.

Wherefore respondents pray that libellants may be dismissed, with costs.

ROB. RAE,
Proctor for Respondents.

Endorsed: Filed July 12, 1866. W. H. Bradley, cl'k.

And on the 12th day of July, in the July term, A. D. 1866, in the record of the proceedings of said court in said entitled cause, is the following entry, to wit :

ASA S. CURTISS
vs.
BARQUE AMERICAN UNION. } Libel.

Now come the parties, by their proctors, and by agreement this cause is set down for hearing on the libel, the answer thereto,
28 the proofs and exhibits filed; and after hearing the same, together with the arguments of the advocates of the respective parties, the court not being now sufficiently advised in the premises, takes time to consider.

And on the 21st day of July, in the July term, A. D. 1866, in the record of the proceedings of said court, in said entitled cause, is the following entry, to wit :

ASA E. CURTISS
vs.
BARQUE AMERICAN UNION. } Libel.

The court having considered, and being now sufficiently advised upon the matters heretofore submitted herein, finds that the defendant, the barque American Union, was in fault, and finds the damages

sustained by the libellant from the collision, as alleged in the libel, at the sum of seven thousand one hundred and sixteen dollars. It is thereupon considered and adjudged by the court that the respondents pay to the libellant the said sum of seven thousand one hundred and sixteen dollars, his damages as aforesaid, together with
29 his costs to be taxed.

And on motion of Mr. Barker, proctor for the libelant, it is considered by the court that a summary judgment be, and the same is accordingly hereby, entered against Hezekiah J. Winslow, the principal, and Wiley M. Egan, the surety, in the sum of fourteen thousand dollars, that being the amount of the bond and stipulation given to the marshal on the arrest of the defendant, and that the libelant have execution therefor, to be discharged and satisfied upon his making thereon the decree for damages herein, interest thereon and costs; and thereupon the respondent, by his proctor, R. Rae, esq., gives notice and prays an appeal to the Circuit Court.

And on the hearing of said cause the libelant, by his proctor, read in evidence the following testimony, to wit:

Depositions taken before John C. Reiley, notary public, on behalf of the libelant, to wit, on the 29th day of September, A. D. 1865.

And the said Thomas Green, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and
30 nothing but the truth, in the cause aforesaid, did thereupon depose and say as follows:

Interrogatory first. What is your name, age, and occupation, and where do you reside?

Ans. My name is Thomas Green; fifty-two years and upwards; mariner by occupation; have been captain of vessels. I reside in Michigan, and temporarily in Chicago.

Int. 2nd. How long have you been engaged in sailing, and how long have you sailed on the lakes? In what capacity?

Ans. Since I was twelve years of age, and have sailed on the lakes about twenty-five years, sometimes as master and sometimes as mate.

Int. 3rd. Were you sailing during the past summer? And if so, upon what vessel, and to what port were you running?

Ans. The first vessel I sailed in was the schooner Fremont, in June; she was in the wood trade to Fish creek, in Green Bay.

Int. 4th. Do you know of any collision taking place between the Fremont and the bark American Union? And if so, when
31 did such collision take place, and where and at what time? Answer fully.

Ans. I do know it; it took place on the eighteenth day of June, of the year 1865, on Sunday morning, ten minutes past five in the morning, the weather being foggy; wind south southeast; the Fremont heading on the starboard tack, east by south and east by north; variation at intervals, laying by, helm half a lee, one reef in the main-

sail, whole foresail and large jib on, going ahead at the rate of one mile and a half about, and at the same rate drifting to leward; could see some distance; waiting to clear up to run for the Door, Death's Door, off the western shore, about seven or eight miles, as near as I can judge, and about the same distance north of Bailey's harbor. I was cook of the Fremont. I came on deck at four o'clock in the morning; that was my usual hour to turn out in the morning without any call; I done my duty about the cooking apparatus in the morning, and about or a little before five a. m. I came on deck for the purpose of getting some meat for breakfast and looking to windward; heard the sound of a bell. I called to the mate; he was look-
32 ing out to windward on the starboard quarter. I asked him did he hear the sound of a bell. He said yes. Also the man at the wheel said I hear it. Well said I, keep a good lookout. Leonard Perent, a seaman, was to windward on the starboard side abaft the main rigging, blowing the horn, at intervals of three and four seconds, just as he could draw a breath. I looked up and saw a vessel approaching under a full crowd of canvass, at a distance of about eight or more times her length from the Fremont, going at the rate over ten miles per hour. When I first saw her she was sailing towards our cathead on the starboard beam. I sung out lustily, Put your helm hard to port. I received no answer, of course, and the next moment I saw her altering with her bow towards our beam. At ten minutes past five a. m., she run right into us, running in from ten to thirteen feet before stopping right into the hull of the Fremont; then the crew of the bark American Union commenced shortening sail after she was into us. I was the first man on board the American Union over her bows. I went aft to the captain of the American Union. I said to him, Captain, this is a bad job. The man did not know how to get out of the jam. Fremont was struck ten
33 feet forward of the main rigging. The captain of the bark American Union, her mate and most of the crew, was forward trying to extricate him from the Fremont, but apparently he did not know how to go about it. I told the captain to heave his head yards aback, which was done; get a hawser from his port bow to the Fremont's starboard quarter, take it to the windlass and heave her out; it was done, but previous to this the second mate of the bark cut the lanyards of the Fremont's main rigging in order to get clear of her; and the mainmast went by the board, taking with it the head of the Fremont, and then we got clear of her; and finally the Fremont broke in two; the fore part of it went out of sight down, and after part, with the exception of the starboard davit, sticking up.

Int. 5th. State what was said by the captain as to his position and location of his vessel.

(Objection to question.)

Ans. When I first spoke to the captain of the bark American Union, What schooner is that, I told him the Fremont, of Chicago. He said, What in the hell are you laying to here, laying to on the east shore? You mistake, captain, said I, you are on the west shore, seven

34 miles off land off Bailey's harbor, to leward. The captain changed color and said nothing. He took our crew on board and took us to Detroit.

Int. 6th. State if the collision could have been avoided, and if so, how.

(Objection.)

Ans. By keeping on their course, or putting their helm to port.

Int. 7th. About how long is the bark American Union?

Ans. I think about one hundred and eighty feet.

Int. 8th. Is it prudent or customary for a vessel to carry full sail in such foggy weather as the weather you describe when the collision took place; and what is the proper course to pursue under such circumstances as to canvass?

(Objection.)

Ans. No sir, not at all, very imprudent; to be under easy sail is the proper course.

Int. 7th. What canvass did the American Union have up or set at that time?

Ans. Every sail she could crowd, all her sails up.

Int. 10th. Did you look to see what she had up?

Ans. I did.

35 Int. 11th. Where were the officers and crew of the Fremont at the time and about the time of the collision? What constitutes a full watch on deck?

Ans. The mate was on deck, myself, the man at the wheel, the man blowing the horn. I called the captain up about the time she struck. That constitutes a full watch on deck. We were seven all told.

Int. 12th. Please state what freight or supplies there was on board the Fremont at the time.

Ans. Some bales of hay; don't recollect the number, some beef, bacon, sugar, tea, and pork; can't say how much pork; might have been meal on board.

Int. 13th. Do you know what the Fremont was worth?

Ans. Between seven and eight thousand dollars.

Int. 14th. What condition was she in?

Ans. Yes, she was in good condition; her timbers were sound.

Int. 15th. State if the Fremont was pushed out of her course?

Ans. She was careened on her beam ends by the collision. The wind was blowing about half a gale at the time.

36 Int. 16th. What effect would it have had on the American Union to have put her helm hard aport?

Ans. She would have passed by the hull of the Fremont three or four times her length to the eastward.

Cross-examination.

Mr. Rae:

1st cross. Please state how dark it was.

Ans. It was broad daylight; ten minutes past five in the morning; sun up.

2d cross. How far could you see?

Ans. I could see the length, seven or eight times the length of the American Union, as I stated before.

3rd cross. Could you see fifteen hundred feet?

Ans. Between twelve and fifteen hundred feet.

4th cross. If there had been no fog how far could you have seen?

Ans. Could have seen nine miles.

5th cross. How did the fog rest on the water and how high was the fog?

Ans. It was all over; you could see the surface of the water; you could see it four to five hundred feet upward; it was a misty
37 fog rolling along the water and high up.

6 cross. Could you see the sun shining?

Ans. No; we could see no sun shining.

7 cross. Was the fog flying over your mast head?

Ans. Yes.

8 cross. Could you see to read?

Ans. Yes, I should think I could. I could see to read; it was not a dark fog.

9 cross. Was it what you would call an illuminated fog?

Ans. It was a light fog, not a dark fog.

10 cross. In looking through a fog of that kind which way can you see the furthest, to the leward or to the windward?

Ans. Could see the farthest to the windward. If you put your ear and face down to the rail of a vessel, as I am in the habit of doing when I look out in a dark fog, you can see the ripple of the water before you can see the bow of the vessel.

11 cross. What kind of a horn had you on board of your vessel?

Ans. A short tin horn. I like them best, because they are
38 the easier to blow.

12 cross. Would a vessel to the windward of you, and thewind blowing a ten or eleven knot breeze, as it was at that time, be likely to hear you at any distance?

Ans. Yes; if they were looking out and paying attention, they might hear a horn; but it is very hard for them to hear.

13 cross. At what distance on that night, and that time, could they have heard a horn to the windward of you?

Ans. Considerable distance—that is all I have to say about it.

14 cross. At the time that you saw the American Union, where were you standing?

Ans. I was standing two feet forward of the main rigging, on the starboard side, holding on to the foremost shroud, looking out.

15 cross. How long had you been out of the cabin at that time?

Ans. Fifteen or twenty minutes, perhaps; don't know exactly.
39 16 cross. When you came out of the cabin, what was the first thing you did?

Ans. I went to the meat cask to get some meat out for breakfast.

17 cross. What did you do next?

Ans. I don't know; I suppose I cleaned the meat, and looked round. I think I cleaned the meat on deck, and looked round up to

the time of the collision—looked round all to the windward, till I heard the sound of the bell.

18 cross. What did you do when you heard the sound of the bell, or where did you go after you heard the sound of the bell?

Ans. I stood then round abaft of the mainmast, abaft of the main rigging. I put my head down to the companion way and called the captain. Our vessel was a fore-and-aft schooner.

19 cross. Which way was your main boom?

Ans. On the port side, the sheet was; the vessel was on the starboard tack.

20 cross. By this time the vessel was into you, was she?

Ans. Yes.

21 cross. It is your opinion that if the American Union had had a proper lookout that the collision might have been avoided?

Ans. I am sure of it.

22 cross. What, in your opinion, constitutes a sufficient lookout?

Ans. A seaman on each cat-head—an officer in the lee waist; that gives him a lookout all over.

23 cross. You say that when you first saw the American Union, she was off your beam, and heading for your cat-heads. Was her bow about abeam of yard, or what portion of her?

Ans. She was; her stern was about thirty or forty feet forward of our beam.

24 cross. From the way you were heading at the time, what direction from your beam would the bow of the American Union be?

Ans. Her bow would be about southeast by south of our beam.

25 cross. Had the bark kept off and went under your stern, would she have had the wind more free than if she had attempted to cross your bows?

Ans. She could not do it; she was too near on; she could not of had it more free; she would have had the wind two points more free; the wind would have been directly aft.

26 cross. Do you know whether any orders were given to your wheelsman from the time the vessel hove in sight till the collision?

Ans. Can't say.

27 cross. Do you know of anything being done on your vessel from the time you notified the mate of the bell up to the time of the collision?

Ans. Not to my knowledge.

Re-direct, recalled.

1st int. With the helm hard aport, would not the bark minded the helm much more readily than it would have done to have put the helm hard starboard?

Ans. Most assuredly she would, in one-tenth part of the time to what she would to have put it hard astarboard.

2d int. Could anything have been done on board of the Fremont to have avoided the collision?

Ans. No, sir.

THOMAS GREEN.

Subscribed and sworn to before me this 29th day of September, A. D. 1865.

JOHN C. REILEY,
Notary Public.

And on the same day, to wit, the 29th day of September, A. D. 1865, the deposition of Leonard Parent was taken before the said notary, John C. Reiley, on behalf of the libellant; and the said Leonard Parent, being called and sworn, testified as follows:

Interrogatory 1st. What is your name, age, and occupation, and where do you now reside?

Ans. My name is Leonard Parent; twenty-seven years and upwards of age. I am a seaman, and have been for seven years since I came to this country. I reside in Chicago; have sailed on the lakes most of the time.

Int. 2nd. What vessel were you on last June?

Ans. On the schooner Fremont.

Int. 3rd. State what, if anything, you know about a collision taking place between the schooner Fremont and the bark American
43 Union, and if so, when and where and the circumstances which occurred.

Ans. I was called in the morning at 4 o'clock, me and the rest of the crew on watch, and after an hour we came on deck; the first thing we heard the bell; from the time I came on deck up to the time of the collision I was blowing the horn; blowed it continually up to the time of the collision, from the time I first heard the bell till the collision. I was blowing the horn all the time, only taking time to draw my breath between times; the first thing I see, I saw the bark a coming, and she went into us. After the collision, we had only time to grab our dunnage, and went onto the bark. I took particular notice before I went on board of the bark, and after I got aboard of her, to see the hole made in the Fremont by the collision. I saw the water running in big as a barrel, and the timbers cut down below the water's edge. She parted and went down.

Cross-examniation.

1st cross. Where did you stand while you were blowing the horn?

44 Ans. I was walking between the foremast and mainmast, on the starboard side.

LEONARD PARENT.

Endorsed: Filed April 20, 1866. Wm. H. Bradley, cl'k.

Deposition of Hiram S. Stevens, taken before the said notary, John C. Reiley, in Chicago, Oct. 6th and 9th, A. D. 1865, *on behalf of libellant.*

And the said witness, Hiram S. Stevens, having been by me first duly examined, cautioned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid, thereupon testified as hereinafter appear:

Interrogatory 1st. What is your name, age, and occupation, and where do you reside?

Ans. My name is Hiram S. Stevens; my age is twenty-six years and upwards; seaman by occupation. I reside now in Chicago.

Int. 2nd. How long have you sailed as a business, and in what capacity?

Ans. Fourteen years, in different capacities, from master to seaman.

45 Int. 3rd. Have you ever had command of a vessel on the lakes, either as mate or master; and if so, which?

Ans. I never had command of a vessel as master, on the lakes. I have been chief mate of the brig Hampton and schooner Mount Vernon, on the lakes, and have been second mate of other vessels on the lakes. I have sailed five years and a little better on the lakes, and about nine years on the ocean; have been in the capacity of master, and in other capacities, on the ocean; most of the time been sailing in large ships. I refer to first-class ships.

Int. 4th. What were you engaged at during the early part of the year 1865, during the season of navigation; and if sailing, in what capacity were you in?

Ans. I was sailing on the schooner J. C. Fremont, as seaman.

Int. 5th. Do you know the bark American Union?

Ans. I do.

Int. 6th. State if you know of a collision occurring between the schooner J. C. Fremont and some other vessel. If so, state when it occurred, and how, with what vessel, and all the circum-

46 stances connected therewith.

Ans. I do know of a collision occurring between the schooner J. C. Fremont and the bark American Union; it occurred on Sunday morning, the eighteenth day of June, 1865, at about five o'clock in the morning. The wind was to the southard, south, little east. I was at the wheel of our vessel, the Fremont, at the helm, with the vessel heading to the eastward; starboard tacks aboard, pretty full against the wind then. We were keeping the vessel close up by the wind; she was in this position to keep her place there, waiting for the fog to clear up. I would call it head-reaching. I mean by that, that the vessel was not endeavoring to beat to windward, and hold her position, and have our vessel under our command, which she would not have been had she been hove to. We had a single reef mainsail, a whole foresail, and jib, being under easy canvas. This was about five o'clock in the morning. The mate and men were looking out at the time, the horn blowing every moment, giving only time to take breath. The fog, at this time, was

not so dense as it had been; not so dense but you could see quite a little distance. I was attracted by a sound of a bell to
47 windward; my attention was attracted by a bell to windward; in about a minute I heard a bell again, and saw a vessel broad on our starboard bow, heading, it appeared, for our night-heads or cat-heads, about the same thing. She did not appear to see us, as she made no efforts to get clear of us, as I could see, till close aboard of us, when she appeared to be paying off, striking us amidships. The vessel did not appear to be assisted any in paying off, as when she struck us she was carrying a full press of after canvas, all of her canvas, for that matter. She was carrying all the canvas she had at that time. The vessel was not prepared to meet a vessel in a fog. She was carrying her foresail in such a manner that she could not brace her yards so as to assist her helm.

Int. 7th. How far off could a vessel be seen that morning, in that fog, and how long was it after you saw her before she struck you?

Ans. Off about five hundred yards or more. I saw her from four to five minutes before she struck us. The captain was called after the vessel was seen; he came on deck with the men, when the vessel was three or four times her length off from us.

48 Int 8th. State what, if anything, could have been done to prevent the collision, by either vessel.

Ans. The bark, heading for our cat-head, as she was, with the booms on the port side, and with the yards braced aport a very little, had her after sheets been hauld aft, and her helm put to port, assisting her in letting go the port braces, and shivering the head-yards, the vessel, the bark, would have come to the wind instantly and passed directly ahead of us; she would not have touched us. The position the vessels were in at the time, if she had luffed one point or two, she would have went ahead of us. Our vessel had the right of way, being on the starboard tack, and lying close to the wind, and not making much way through the water. We was in as good a position as we could be to favor the bark, at the time the accident or collision occurred. If the bark had had a good lookout at the time, she would have seen us in time to have avoided the collision. I saw the vessel time enough for her to have been hove into the wind once or twice, as a vessel going in that position, generally carrying her weather helm will answer her lee helm instantly; whereas it takes them a long time to answer their weather helm, unless
49 assisted by the sails. I should judge the vessel was going through the water ten miles an hour at the time.

Int. 9th. How was the bark's helm at the time she struck you?

Ans. The helm was starboard as she was paying off, when close aboard of us striking us amidships. I am sure the helm must have been astarboard from the bark's position, and also from the statement of the mate of the bark that her helm was starboard. I think that the vessel would have passed the schooner if she had kept on her course; she certainly would, if she had luffed, putting her helm hard aport, for it only required one or two points to have had her pass.

Int. 10th. State what was the result of the collision to the Fremont.

Ans. The vessel sunk in about ten minutes, filled with water, and sunk. The last I saw her starboard quarter above water, her foremast being well under. There was nothing of the vessel saved; she was a total loss, excepting the compass, signal lantern, and rope, which were taken on board the American Union. I put them
50 aboard of her myself.

Int. 11th. State what became of you after that time, and what you observed.

Ans. The crew of the Fremont all went aboard of the bark, and went on to Detroit; on the passage down I observed that the American Union carried a heavy weather helm when off the wind, likewise when in stays. It took her some time to pay off even with the squared canvas aback. I am, therefore, satisfied that she would answer her lee helm instantly. I observed that all the way down.

Int. 12th. State what was the watch of the Fremont at that time.

Ans. An officer of the watch and two seamen, the vessel carrying four seamen at the time; seven men in all. An officer and two seamen, being half of the crew, being considered a full sea watch.

Int. 13th. What kind of horn did the Fremont have aboard?

Ans. She had a good fog horn.

51 Int. 14th. Are you a resident of Chicago, and do you intend to remain in the city?

Ans. I am a resident, but expect to leave this evening to be absent six months.

Int. 15th. In what part of Lake Michigan was the Fremont at the time of the collision?

Ans. I should say about eight miles off Bailey's harbor.

Int. 16th. Was the bark American Union in her proper position and course in her way from Chicago to the straits?

Ans. She was not in her proper position at the time of the collision, neither was she steering a proper course for the straits, as the course is a good deal more easterly.

Int. 17th. State the condition of the Fremont at the time of the collision.

Ans. She was a staunch, well-found vessel, the best I have been in this summer, having new fore and aft canvas, and all canvas good.

H. S. STEVENS.

Subscribed and sworn to before me this 6th day of October, A. D. 1865.

JOHN C. REILEY, *Notary Public.*

52 MONDAY, *October ninth, A. D.* 1865.

The witness, Hiram S. Stevens, previously examined in chief, was recalled on cross-examination by Mr. Rae for the respondent.

Cross-examination.

1st cross-interrogatory. How long had you been at the wheel of the Fremont when the collision occurred?

Ans. About one hour, perhaps a few minutes over.

2 cross. How was she heading when you took the wheel?

Ans. I do not know how she was heading; it was given me full, and by, or by the wind to keep the vessel as close up to the wind as she would go.

3 cross. You were not then sailing on any particular course, but watching the wind and sailing by it?

Ans. Exactly.

4th cross. Did you keep on that way sailing up to the moment of the collision?

Ans. We did. I want to explain. We were not endeavor-
53 ing to beat to windward at the time, but were standing off to hold our position. We were in a position what I would term head-reaching at the time, so as to hold our position.

5 cross. How was your helm at the time when you first discovered the American Union?

Ans. Half a lee, to keep the vessel by the wind.

6th cross. How long had it been kept in that position?

Ans. From the time I took the wheel, with a slight variation; if she got too close to the wind, it was brought up a spoke or two; a vessel head-reaching in that shape generally carries her wheel in that position most of the time.

7 cross. State, as near as you can, the direction of the wind.

Ans. South, some easterly; I should think a point south by east, southeast from a point to a point and a half easterly. I did not take the exact bearings of the wind; it was south some easterly to it.

8 cross. How, as near as you can tell, was your vessel heading at the time you first saw the bark American Union?

54 Ans. I don't know how our vessel was heading, but I could tell how she ought to be heading, being close by the wind, as I never take any notice of her course a vessel is making when by the wind, as that is the duty of the officer of the watch, but I should think she was heading from east by south to east, southeast. I should think so. That's what a vessel would be with her head close up to wind, and that is all about she would lay.

9 cross. How did the bark's bow bear from where you stood at the wheel from the time you first saw her?

Ans. I did not note how the bark bow bore from where I stood, as she was not heading for that end of the vessel, for I was standing upon the stern; she was heading for our bow's night heads.

10 cross. How far was she east or west from where you stood when you first saw her?

Ans. I should say she was about a hundred yards east, and from four or five hundred yards southerly, when I first saw the vessel.

11 cross. How long was your vessel?

55 Ans. About a hundred and twenty feet over all. I mean her hull.

12 cross. Do you mean to be understood that she was more than the length of your vessel east of you?

Ans. I said she was a hundred yards east and four or five hundred yards south; it might be more.

13 cross. The bark would be heading north northwest, then?

Ans. She would not be heading north northwest; I don't know how she was heading; but I was informed she was heading north by east half east, but her course had been changed to north by east; that would be about the right position for her to our vessel as I then saw her.

14 cross. State how near was she after you saw her heading in that position before she changed her course, and when she did change her couse what direction did she change her course.

Ans. She kept on steadily till close aboard of us, when she suddenly seemed to be paying off to the westward; by close aboard I mean once or twice her length, when she appeared to be paying off.

56 15 cross. How did she head, towards the westward, when she struck you, as near as you can give?

Ans. I do not know how she then headed, but should think that she headed off two points from her course, which would make her heading off north by west; she might not have headed off quite so much.

16 cross. How far would your head reached at the speed you were going, if any, had you when you first saw the bark paid off to the north and westward?

Ans. I should think at the speed we were going, not more than twice our length, as it takes some time for a vessel to get away after letting go the main sheet to shiver her after canvass.

17 cross. Had you sufficient headway on to have stayed; and if so, how far would you have head reached before you stayed?

Ans. She would not have stayed without righting the helm and giving her way, and then I think she would have stayed under the canvass she was carrying; it is doubtful if she had headway enough to have stayed; she might have stayed, but it is doubtful.

57 18 cross. Did you blow the fog horn at all?

Ans. I did not in that watch.

19 cross. State where the mate stood.

Ans. The mate was officer of the deck, and stood on the deck forward looking out.

20 cross. Had he been on the quarter deck, at all during your watch?

Ans. He had several times.

21 cross. Usually the quarter deck is the proper place for the officer of the deck?

Ans. Usually; it is not at all times; at a time like that he is all over the deck looking out. I cannot state exactly how long before the collision he had been on the quarter deck; it might have been five minutes, as he was walking back and forth all over the deck looking out, as an officer generally is in a time like that.

22nd cross. How long before the collision was it since the officer had been on the quarter deck; and in his absence from the quarter deck did he leave anybody on the quarter deck in his place?

58 Ans. I do not know how long it was, and the vessel had no quarter deck, as she was a flush-deck vessel. Therefore the officer was walking back and forwards upon the deck looking out in all directions. The officer of the deck would have nobody to leave there with myself at the wheel and one man upon the look-out, the three of us constituting a proper sea watch.

23 cross. What was the man on the look-out doing during your watch?

Ans. Looking out and blowing fog horn every moment, merely pausing taking breath.

24 cross. Where was he stationed?

Ans. I could not tell his exact position, but he was forward about the bows somewhere.

25 cross. Was he forward of the foremast?

Ans. He was forward, somewhere about the bows. I can't tell exactly.

26th cross. When you say the bows, do you mean forward of the foremast?

Ans. I mean forward of the main rigging; he was was there somewhere; I can't state his exact position.

59 27 cross. Is the foremast forward of the fore rigging?

Ans. The fore rigging is attached to the foremast.

28 cross. State whether you saw the man on the look-out at his position; and if yea, state where he stood.

Ans. What time is this; at time of collision or previous to it? (Counsel answer: for an hour previous to, at time his watch commenced.)

Witness resumed: I saw the man forward, as he was in no particular position, as a man on the look-out is generally walking from one bow to the other backwards and forwards, while the officer is walking around amidships and aft, looking out at the same time.

29th cross. Had the bark not changed her course, and the rate at which you were sailing, would she have crossed your bows, and if so how far distant from your bows would she have crossed it?

Ans. She might have crossed our bows. I can't say whether she would or not; she certainly would if she had ported her helm, as it required only a point or two to do so.

H. S. STEVENS.

Subscribed and sworn before J. C. Reiley, notary public, this 9th day of Oct., A. D. 1865.

60 J. C. REILEY, *Notary Public.*

Endorsed: Filed April 20, 1866. Wm. H. Bradley, clerk.

Deposition of Lion Silverman, taken before the said notary, John C. Reiley, in Chicago, October 17th, 1865, on behalf of libellant.

And the said witness, Lion Silverman, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid, thereupon testified as follows:

Interrogatory first. What is your name, age, and occupation, and where do you now reside?

Ans. My name is Lion Silverman; forty-six years and upwards. I am engaged in the shipping business, wood and coal. I reside now in Chicago.

Int. 2nd. Were you acquainted with the schooner John C. Fremont? If so state if you know her value.

Ans. I am acquainted with her. I fix her value for Mr. Curtis' business at not less than seven thousand dollars, at or about the time of her loss; she would be worth more now to him; the way
61 freights are now—I could not say what she would be worth; she would be worth more to him any way. I should have been willing to have given sixty-five hundred dollars for her two or three weeks before the accident or thereabouts.

Int. 3rd. Are you acquainted with the value of vessels, and do you own vessels?

Ans. Yes, I am so considered; I am the owner of vessels,

Cross-examination.

By Mr. Rae:

1st x-int. Have you ever been a sailor?

Ans. No, sir.

2 x-int. How long have you resided in Chicago?

Ans. Not quite four years.

3rd int. How many vessels have you owned?

Ans. I had an interest in two A one vessels in last four years; I have forgotton how old the Fremont was; she had a new mainsail; the other sails were repaired and were about three years old; a suit of sails, if well taken well care of, may last 5 or 6 years; usually last and are changed every 3 or 4 years, and those large vessels on
62 her class would last if well taken care of,—I can't tell how long they would last; I don't know how old her spars were; I don't remember that she had any new spars in her since Mr. Curtis got her; I can't answer the question whether she was kept up as A No. one vessel; for her class she was kept up first-rate.

Re-direct.

1st. How many vessels have you owned in the last four years?

Ans. I have owned four whole ones and I owned a quarter of each of two, and I owned $\frac{3}{8}$ of one, and I own $\frac{3}{8}$ of a propeller now.

LION SILVERMAN.

Subscribed and sworn to before me this 17th day of October, A. D. 1865.

JOHN C. REILEY, *Notary Public.*

And Curtis F. Camp, a witness produced on behalf of the libellant, and having been by the said J. C. Reily, notary, first duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon on the said 17th day of October, A. D. 1865, testify as follows:

63 Interrogatory first. What is yonr name, age, residence and occupation?

Ans. My name is Curtis F. Camp; I reside in Chicago; am a sailor by occupation, and was twenty-one years of age last August.

Int. 2nd. How long have you been sailing?

Ans. For the past six years.

Int. 3rd. What vessel did you sail in in the early part of the sum-of the year 1865, and in what capacity?

Ans. I was in the bark S. B. Pomeroy, up to about the first of June, when I went on the Fremont in the capacity of steward; I made one trip as steward in her; afterwards sailed on her as first mate; only one mate on her.

Int. 4th. State if you know of any collision taking place between the J. C. Fremont and any other vessel; if so, what vessel was it, when did it occur, where did it occur, and all the circumstances connected therewith.

Ans. I know of a collision taking place with the bark American Union; it was on Thursday, I think; I don't recollect what day it was; it was in June, 1865; it took place in Lake Michigan, off Bailey's harbor, between Bailey's harbor and Death's Door, about

64 twelve miles off the shore; I was walking the decks from midships to the quarter deck, between four and five o'clock in the morning, and I heard a bell on the starboard bow; I got up into the rigging, starboard main rigging, and presently I heard it again, and then I went and called the captain; when I came from calling the captain, I saw the American Union heading for our starboard cat-head about six or seven hundred yards off; immediately the Amercan Union struck us amidships the Fremont sunk in the water; she was a total loss; when I first saw the American Union, I think she was south southeast from us; we were heading by the wind, the wind to the southard, making but little headway; we were not attempting to make headway; we had the starboard tacks aboard; we had two reef main sail; whole fore sail and stay sail; our destination was Fish creek, in Green bay; we were lying by the wind waiting for the fog to clear up; it was daylight; the watch on board the Fremont were employed listening if they could hear a bell or horn; one of the men was at the wheel, one forward blowing the horn; I could see six or seven hundred yards; aboard the American Union the collision might have been avoided by putting her helm aport; nothing could

65 have been done aboard the Fremont that was not done to have avoided the collision; we had a tin horn aboard our vessel, a good horn; the horn was blown at intervals of a minute between intervals.

Cross-examination.

Mr. Rae:

1st x-int. Who was officer of the deck at the time of the collision?

Ans. I was officer of the deck at the time of the collision.

2nd x-int. Where did you stand at the time you first saw the bark American Union?

Ans. A little forward of the cabin.

3 x-int. Was it as soon as you had returned from calling the captain?

Ans. I first called the captain and returned to the forward part of the cabin, and just as I got there I saw the bark American Union.

4th x-int. Where was the captain when you called him?

Ans. In the cabin; I think he was not in bed; I did not go below, I just put my head down the companion way and called him.

66 5th x-int. How did the bark American Union bear from you when you first saw her?

Ans. I think she bore south southeast from me; she was heading for our starboard cat-heads when I first saw her.

6th x-int. Was she east of your starboard cat-head at the time or west of it?

Ans. East of it; she might not have been east or west, but she was heading right for our cat-heads or somewheres thereabouts.

7th x-int. Are you sure it was east or west of line south of your cat-heads.

Ans. She was not any west of it, and I think she was some east of it and from six to seven hundred yards south of us.

8th x-int. Do you know from looking at the compass the precise or general direction in which your vessel was heading, or do you only judge the way your vessel was heading from the fact that she was sailing by the wind?

Ans. I know it from the vessel being by the wind.

9th x-int. How was she then heading?

Ans. She was heading by the wind; the wind to the southard.

67 10th x-int. To what point of the compass was she heading?

Ans. She was heading by the wind, the wind to the southard.

11th x-int, Is that your answer to the question?

Ans. Yes, that is my answer.

12th x-int. How long had she been sailing by the wind?

Ans. She had been sailing by the wind all my watch, and I came on deck at four o'clock.

13th x-int. Had the American Union ported her helm at the time you first saw her, would she went under your stern or crossed your bows?

Ans. She would have crossed our bows.

14th x-int. Would she have crossed your bows if you had had a beam wind, or went under your stern?

Ans. She would have crossed our bows,

15th x-int. Did you notice whether she changed her course after you first saw her; and if so, how did she change her course?

Ans. She changed her course after I first saw her; she changed it to the westward.

16th x-int. You say when you first saw her she was heading right for your starboard cat-head. Had she not changep her course at all, where would she have struck you?

68

Ans. Yes, she would have struck us on the starboard cat-head, if she had not changed her course,

17 x-int. Do you know how free the bark had the wind; was she sailing by the wind or free?

Ans. I don't know how free she had it. She was sailing with the wind free.

CURTIS F. CAMP.

Subscribed and sworn to before me this 17th day of October, A.D. 1865.

J. C. REILEY, *Notary Public.*

And Henry Fleming was also called on the above day, and having been duly cautioned and sworn on behalf of the libellant, testified as follows:

Int. 1st. What is your name, age, and occupation, and where do you now reside?

Ans. My name is Henry Fleming; my occupation is sailing; I reside in Chicago, twenty-nine years and upwards.

Int. 2nd, How long have you been sailing?

69

Ans. Since I was fifteen years old; two years out of that I did not sail,

Int. 3rd. What vessel were you sailing during the early part of the summer of the year 1865, and in what capacity?

Ans. I was sailing at that time the schooner J. C. Fremont, in the capacity of captain.

Int. 4th. State what you know any collision taking place between the Fremont and any other vessel; and if so, what vessel was it; when did it occur, and when and what took place.

Ans. I know of a collision; it occurred on a Sunday morning, the 18th day of June, 1865, somewhere about five o'clock in the morning, I don't know exactly, on Lake Michigan, somewheres, I should judge, off Bailey's harbor; I should think about 12 miles off the land, and between the Fremont and the bark American Union. I was below about 20 minutes in the morning from about half-past four, when the mate called me and told me he heard a bell on the weather bow. I was already dressed and came at once on deck; when I came on deck saw a vessel. I could not tell the exact rig or what vessel it was at that time, but she was heading pretty near on to where I

70

stood; the first I saw was her port bow; I was a little forward of midships when I first saw her. I then went forward. I saw her when I first came out of the cabin, and then went forward. I saw how she was heading from where I stood, forward amidships. She appeared to be coming towards the fore rigging or weather bow somewhere, or by us head reaching or her keeping off, one of the two or both, it fetched her a little farther aft us. When she struck she struck just about amidships. She went in about to the centre-

board box. She sunk. The last I saw of her was part of her foremast and her davits. She, the Fremont, was carrying at the time a double-reefed main sail, whole fore sail and stay sail or jib. I should judge from the interval that the bark was from 5 to 600 yards away, when I first came on deck; that is as well as I am able to tell. The bark, when I got aboard of her and had a chance to see, she was carrying square fore sail, fore top sail and her fore gallant sail, and her fore royal. When I saw her she settled down her fore royal about the time she struck; she was also carrying two jibs, main stay sail,
71 main topmast stay sail, and main top gallant stay sail, main sail, main gaft top sail, mizzen and mizzen gaft top sail. Those sails were set at the time she run into us. She looked to be coming pretty fast. The captain of the bark told me he had left Chicago the day before at 10 o'clock; he said he had rather more wind than he had had the greater part of the night. I think the wind on the bark was a little on the starboard quarter. I should judge that from the way her sails were trimmed; all her fore and aft sails were on the port side. I should say that the bark, having been out about 29 hours, you could figure it—I should say she was going at the rate of about (11½) eleven and one-half miles an hour at the time of the collision.

Int. 5th. Could anything have been done by either vessel to have prevented the collision?

Ans. I think so, I am sure of it,

Int. 6th. How and by which vessel?

Ans. I think the American Union could have cleared us by putting her helm to port.

Int. 7th. Which way would she have answered her helm the quickest, to have put her helm to port or astarboard?

72 Ans. To have put her helm to port she would have answered her helm the quickest.

Int. 8th. How would she have passed your vessel?

Ans. To the windward of us.

Int. 8th. If the American Union helm had been put to starboard, what effect would it have had upon her?

Ans. I think she would have paid off a little. I don't think she would pay off very fast. She had her after canvas set, her fore royal; they had settled down about the time of the collision. I saw it come down. If I should attempt to do that, I should settle down my after canvas, my mizzen gaft topsail and spanker.

Int. 9th. State the condition of the Fremont at that time.

Ans. Her fore sail and main sail were new; the rest of her sails, her jib, flying jib, jib top sail, fore and main gaft top sails. I should judge that they were about two years old. She was in good condition; she had just come off the dock a trip or two, before that newly caulked and considerable carpenter work; new keelson on aft, new rudder, some new skin lining. The light sails were in good repair, came aboard in good repair.

73 Int. 10th. State why you were in the position you occupied in Lake Michigan; and if it was a safe position.

Ans. I considered it a safe position. I was there because I did not consider it safe to run for the Door, because of foggy weather.

Int. 11th. State if at the time you were in the position or course of vessels running to Green Bay.

Ans. I calculated I was a little outside of the course of vessels running for the Door, to get out of the way of steamboats and propellers, who generally were prowling alongside close into the land.

Int. 12th. State if the usual course of vessels from Chicago to the straits is east or west of the place where you were at the time?

Ans. Their course is east of where I was.

Int. 13th. About how far east?

Ans. The course from Chicago to the Manitoons is north by east; to the Door the course is north. I don't know how we were heading. I did not look at the compass after I came on deck.

Int. 14th. How were you heading with reference to the wind?

74 Ans. We were heading by the wind.

Int. 15th. When you came on deck, what watch had you?

A. It was the morning watch for the day; port watch on deck—the mate and two men.

Int. 16th. State if you know what freight the Fremont had on board.

Ans. One barrel of beef, side of bacon, one barrel pork, 3 bales of hay, ten bags of meal, 1 jar of butter.

Int. 17th. Have you ever been master of vessel before?

Ans. I was master of one before, the Elba.

Int. 18th. State if you know the value of the Fremont?

Ans. I could not swear positively for what she would sell for.

HENRY FLEMING.

Subscribed and sworn to before me this 17th day of October, A. D. 1865.

J. C. REILEY,
Notary Public.

And on the 25th day of October, A. D. 1865, Alexander McPherson was duly examined and sworn by the said J. C. Reiley, notary, on behalf of the libellant, and which said witness did depose and say:

75 Interrogatory 1st. What is your name, age, and occupation, and where do you now reside?

Ans. My name is Alexander McPherson; 32 years old last Monday; I am a seaman by occupation; my home is in New York city; have no family; I am boarding here now; my address is 204 , care Hugh McKinnon, Madison street, New York; I have been sailing 16 years last July.

2nd int. State what vessel you sailed on up to 18th day of June, 1865.

Ans. I was sailing on the American Union, a bark.

3rd int. State what you know, if anything, of a collision taking place between the bark American Union and any other vessel. If yea, state when it occurred, where it occurred, and what were the circumstances.

Ans. I know of a collision taking place between the bark American Union and the schooner John C. Fremont, on Sunday morning about 5 o'clock, on the 18th of June, 1865. It was on Lake Michigan; don't know exactly the location where it took place.

4th int. In what direction was the bark American Union
76 sailing at the time of the collision? State the circumstances of the collision.

Ans. She was sailing north by east, that was the course; the bark was running with all sail on, about 9 to 10 knots an hour; weather quite foggy. The first thing I heard was the men on the look-out reported there was the sound of a fog horn on the lee or port bow. Mate went forward, got on the forecastle and sung out to me, Push the helm hard astarboard. Repeated it to me twice. I done so promptly; she went off about 3 or 4 points; the next thing I see was the schooner; I did not know what it was; I heard the crash immediately from my position; I could not see as quickly as those stationed on the forecastle; I was stationed at the wheel; the wheel is aft in the bark; the bark struck the schooner as near midships as possible; immediately after the collision all sail was taken off the bark, and put under a close-reefed topsail; all hands on bark came on deck at the time. The collision knocked the mainmast out of the schooner; broke her sides and she sunk; she went down from 20 minutes to half an hour after she struck. We remained there some time after she struck. The crew of the schooner came aboard immediately after the collision, and the captain kept the bark under short can-
77 vas until about 12 o'clock, noon, when the fog cleared up; nothing was saved from the schooner but the clothes of the men; I did not see anything else saved.

5th int. If the helm had been put to port, instead to starboard, what would have been the result?

Ans. I think either the two vessels would have come together alongside of each other, or passed each other without touching.

6th int. State what could have been done on the part of the bark to have avoided the collision.

Ans. Putting the helm hard aport, I think, would have avoided the collision.

7th int. What is the proper course for a vessel to pursue in time of a fog with reference to her canvas?

Ans. The majority of ships I have been in have shortened sail, and laid by till the fog cleared off, or lay by under easy canvas till the fog cleared off. I consider that the proper course to be pursued.

Int. 8th. Would a prudent master crowd all sail on in such a fog as that on the 18th, with a good wind?

78 Ans. The majority of captains I have been with would not. I think a prudent master of a vessel would not.

9th int. From what you saw of the schooner Fremont at the time of the collision, how was she sailing with reference to the wind?

A. She was on the starboard tack, by the wind.

10th int. How was she with reference to her canvas?

Ans. I could not see the main sail, but her fore sail seemed to be reefed to me.

11th int. Was her course a proper one under such circumstances?

Ans. Yes, I so consider it; a prudent captain, with the property of her owner and the men's lives under her control, would consider it so.

12th int. State whether the bark had a man on the royal yards on the look-out.

Ans. I did not see any; I could have seen one if he had been there.

ALEX'R McPHERSON.

Subscribed and sworn to before me this 25th day of October, A. D. 1865.

JOHN C. REILEY,
Notary Public.

Cross-examination of the witness, Alexander McPherson,
79 opened by Robert Rae, esq., proctor for respondent, Thursday, October 26th, A. D. 1865.

J. C. REILEY,
Notary Public.

By Mr. Rae:

1st cross-interrogatory. Where are you stopping in Chicago?

Ans. 223 Van Buren street, with David J. Ravells.

2nd cross. Who induced you to come here and testify for these parties?

Ans. There was a card left at my boarding house for me to come and see Mr. Curtis.

3rd cross. Who left that card?

It was left by Mr. Curtis himself, or by his orders; if he did not leave it, I don't know who did leave it. I was not in town.

4th cross-int. Do you know how he came to send for you?

Ans. No, sir.

5th cross. Have you any idea how he came to send for you?

Ans. I have no idea, except it was by some of the crew of one of the vessels; I don't know which; I don't know how he came to find me; I don't know at all.

80 6th cross-int. Do you know any of the crew of the Fremont?

Ans. No, sir.

7th cross. Did you make a protest in this case?

Ans. Yes, sir.

8th cross. Before whom did you make the protest?

Ans. Before Captain Waldron.

9th cross. Before what notary did you make the protest?

Ans. I don't recollect his name. It was done in Buffalo.

10th cross. Did you not state in that protest that the collision was occasioned entirely by the fog?

Ans. Yes, sir; I did, as far as I can recollect.

11th cross-int. Didn't you make a statement here in Chicago, in this city, and signed by you?

Ans. Yes, I did just the same as I did to you, just as I knew the facts aboard of the vessel. I swore to that statement.

12th cross-int. Did you not in that statement say that the collision was occasioned by a fog?

Ans. Yes, sir.

13th cross-int. Did you not in that statement say that you
81 did not know of anything that could have been done by the bark American Union to avoid the collision, other than that which she did do?

Ans. I don't recollect of saying that. I can't swear positively I did not say it; but I don't recollect.

14th cross-int. Did you, either in your protest, or in that statement, say that the American Union was in any way to blame?

Ans. No, sir; I don't think I did.

15 cross-int. Was what was sworn to in your protest by you, and in the written statement made by you, true or false?

Ans. True, as far as I recollect, sir.

16th cross-int. Did you ever state to the notary who made your protest, or to the gentleman who took your statement here under oath, that you thought the collision could have been avoided by the bark putting her helm hard aport instead of hard astarboard?

Ans. I don't recollect that I did.

17th cross-int. Will you swear positively?

Ans. I don't recollect; it is some time ago, and I did not think there would be anything more about it.

82 18th cross. You did not expect a law suit at the time you made your statement here?

Ans. I thought there would be a law suit.

19th cross. Didn't you expect to be called as a witness?

Ans. No, sir.

20th cross. Why did you not expect to be called as a witness?

Ans. Well, I don't know, sir. I did not think I would be required.

21st int. Why did you not think you would not be required?

Ans. I could not exactly say.

22 int. Why can't you exactly say?

Ans. I intended to go down to New York the next time I went to Buffalo; that's my answer.

23rd cross-int. Did you, at the time you made your protest, or before it, state to anybody on board of your vessel, and if so, to whom, that your helm ought to have been hard aport at the time of the collision?

Ans. I don't recollect that I said anything about that, although I might have passed a remark amongst the rest of the men.

83 24th cross. Was Mr. Curtis the first one to whom you remember of having made that remark?

Ans. I don't recollect, sir—yes. I correct this. He is the first person that I remember.

25 cross. When did you first think that the wheel ought to have been put aport instead of put astarboard?

Ans. I thought all along, from the time of the accident, and before, from the time of hearing the fog horn on the lee bow.

26th int. Which way was the wind?

Ans. The wind was from the southward, south, as near as I can remember.

27th int. How was your main fore boon swung?

Ans. The booms were off to port, on the port side.

28th cross-int. How long is your vessel?

Ans. I don't know, sir; she is a pretty long vessel.

29th cross-int. Was the wind east of south or west of south?

Ans. It was south, as near as I can recollect by compass.

30th cross. Then you had the wind almost right after you, had you not?

Ans. Yes.

84 31st cross. What kind of a breeze had you?

Ans. Nine or ten-knot breeze.

32 cross. With the wind south had you been heading east by north, varying to east by south between those points with such a breeze, with a reefed fore sail, main sail up, jibs flying, how fast would she go through the water?

Ans. She, a vessel like the American Union, would go about 11½ knots. She would go considerably faster than before the wind.

33 cross-int. Most any vessel would do it, would they not?

Ans. Yes, most of them would, of her sailing qualities.

34th cross. How fast would a vessel like the Fremont go?

Ans. I don't know; a vessel flat bottomed, schooner built, 120 feet long, like the Fremont, if she were clipper built like the bark American Union, she would go somewhere about the same thing, ten or 11 knots.

35th cross. How long had you been sailing north by east?

Ans. I can't exactly say; about half an hour or three-quarters. I can't be positive.

36th int. How had you been heading before that?

Ans. North.

85 37th int. Who gave you the courses?

Ans. The man that I relieved gave me the first course. The captain gave me the second course.

38th cross. Was the captain on deck at the time of collision?

Ans. I don't recollect seeing him.

39 cross. Could he have been on deck and you not see him?

Ans. Yes, he might have been forward of the house; if he was on the lee side forward of the boom, I could not see him at all.

40th cross. Did you hear those on board of your vessel ring the fog bell?

Ans. Yes.

41 cross. Did they ring the bell often and loud?

Ans. Yes.

42 cross. Which could be heard the farthest, ordinary fog horn or the bell you had?

Ans. The bell could have been heard the farthest with the fog horns they have here. I have not seen any patent fog horns here. A bell like the American Union's is the best. A bell like the American Union would deprive men of their sleep if placed on the forecastle, it is so loud.

Re-direct.

86 1st re. In making of the protest, and in the statement made in Mr. Rae's office, was any question put to you as to how the helm should have been on the American Union?

Ans. I don't recollect.

ALEX'R McPHERSON.

Subscribed and sworn to before me, this 26th day of October, A. D. 1865.

JOHN C. REILEY, *Notary Public.*

Endorsed: Filed April 20, 1861. Wm. H. Bradley, cl'k.

And on the 15th day of December, A. D. 1865, Barnum Blake, of Port Washington, State of Wisconsin, was duly examined, cautioned, and sworn by Joshua C. Knickerbocker, notary public at Chicago, Ill., on behalf of the libelant, and who thereupon did testify and say:

Interrogatory first. What is your name, age, residence and occupation?

Answer to interrogatory first. My name is Barnum Blake; my age is forty-eight years; my residence is Port Washington, Wisconsin; forwarding and commission business and dealing in vessels somewhat.

Interrogatory second. Were you acquainted with the
87 schooner John C. Fremont in the spring of 1865? If so, state if you know her value at that time.

Answer to interrogatory second. I was acquainted with her at that time. I wanted to buy a vessel and I examined her for that purpose. I offered Captain Curtiss six thousand and five hundred dollars cash for her about the last of February or first of March, 1865, and he refused to take it, asking seven thousand dollars. I saw her again in June, 1865, in Miller's dry dock in Chicago, Illinois, and I would have given him sixty-five hundred dollars for her at that time as she came out of the dry dock.

BARNUM BLAKE.

Taken, subscribed, and sworn to before me, this 15th day of December, A. D. 1865.

JOSHUA KNICKERBOCKER,
Notary Public.

And on the 11th day of April, A. D., 1865, James Kyle and John A. Reid, of Chicago, Ill., were duly cautioned, examined, and sworn before the said Joshua C. Knickerbocker on behalf of the libelant, and the said James Kyle did thereupon depose and say:

What is your name, age, occupation, and place of residence?

88 My name is James Kyle; age, 27 years. I was captain season before last, mate last season, and have no position this season yet; Chicago, Illinois.

Interrogatory 2nd. Have you been sailing on the lakes? If so, how long, and upon what kind of vessels?

Answer to interrogatory 2nd. Yes; eleven years; brigs, barques, schooners, and propellers.

Interrogatory 3rd. How far out from the west shore of Lake Michigan are vessels usually to be found in the lumber and grain trade?

Answer to interrogatory 3rd. In the lumber and grain trade they are to be found from one shore to the other, if I answer that question correctly.

Interrogatory 4. In a dense fog, where are such vessels likely to be found from the west shore?

Answer to interrogatory 4th. I can't answer it, for they are likely to be found all over the lake.

Interrogatory 5th. What would be the course of a vessel sailing from Chicago to the Door, and how far out from the west shore of the lake might it be proper for a vessel to be, in a dense fog, when about off Bailey's harbor?

89 Answer to interrogatory 5th. Well, if running a due course from Chicago to the Door north, half east, and caught in a dense fog off Bailey's harbor, I suppose she would be eight or ten miles off the land.

Interrogatory 6th. What was the usual and proper fog signal used on a vessel of the size of the Fremont in June, 1865?

Answer to interrogatory 6. A fog horn.

Interrogatory 7th. What sized horns are used on vessels of the size of the John C. Fremont?

Answer to interrogatory 7th. Different sizes.

JAMES KYLE.

Taken, subscribed and sworn to before me this 11th day of April, A. D. 1866.

JOSHUA C. KNICKERBOCKER,
Notary Public.

And the said John A. Reid, on said 11th day of April, A. D. 1865, before the said J. C. Knickerbocker, notary, did depose and say:

Interrogatory 1st. What is your name, age, occupation, and place of residence?

Answer to interrogatory 1st. John A. Reid; 46 years; mariner; a captain; Chicago, Illinois.

90 Interrogatory 2. How long have you been sailing, and in what capacity, and when?

Answer to interrogatory 2d. I have been sailing twenty-nine years. I have been in all the capacities aboard of a sail vessel, and about twenty years master on the lakes.

Interrogatory 3. What would be the distance from the west shore of Lake Michigan that vessels in the lumber and grain trade would be likely to be found when in their course, say about off Bailey's harbor?

Answer to interrogatory 3. From ten to twelve miles.

Interrogatory 4. About how far off from the shore would a vessel be likely to be found, sailing from Chicago to the Door, in a dense fog? Off Bailey's harbor?

Answer to interrogatory 4. Well, she ought to be within five miles on either side of the line described in my answer to the 3d interrogatory, dodging.

Interrogatory 5. What do you mean by the word dodging?

Answer to interrogatory 5. Well, it is a common word used among sailors, and means waiting for daylight or to see the way into some particular place you want to go to, or waiting for the fog to clear up.

91 Interrogatory 6. Do you the schooner John C. Fremont? If so, what would be her proper course when making for the Door when about off Bailey's harbor, in case of a dense fog, when sailing from Chicago, and how should she be managed?

Answer to interrogatory 6. Yes, sir; north; she should be hauled by the wind, and her light sails taken in.

Interrogatory 7. What was the proper fog signal for vessels of that class in June, 1865?

Answer to interrogatory 7. A fog horn.

Interrogatory 8. Have you ever seen the fog horn used on board the schooner John C. Fremont? If so, state what kind of horn it was, and whether it was a proper horn to be used upon vessels of that class.

Answer to interrogatory 8. No.

Interrogatory 9. What sized horn is usually used on a vessel the size of the Fremont?

Answer to interrogatory 9. A short horn is usually used.

Interrogatory 10. Which is the best, a long or short horn?

92 Answer to interrogatory 10. A short horn.

J. A. REID.

Taken, subscribed and sworn to before me, this 11th day of April, A. D. 1866.

JOSHUA C. KNICKERBOCKER,
Notary Public.

Deposition of Nathan W. Kirtland, taken at Chicago, Ill., on the 21st day of October, A. D. 1865, before Joshua C. Knickerbocker, notary public, on behalf of the libellant.

Interrogatory 1st. What is your name age, place of residence, and occupation?

Answer to interrogatory 1st. Nathan W. Kirtland; forty-one years; Egg Harbor, Door county, Wisconsin; I have been a master and owner of vessels for the last fifteen years.

Interrogatory 2nd. Did you know the schooner John C. Fremont, in June, 1865, before her loss? If so state, her value at that time.

Answer to interrogatory 2. I did; she was worth seven thousand dollars.

Interrogatory 3rd. Have you ever owned the schooner John
93 C. Fremont; if so when, and what was her condition when you sold her?

Answer to interrogatory. I owned a part of her last year up to January or February, 1865. Her timbers were sound; she needed some work upon her hull, and new sails, which Mr. Curtis furnished after he purchased her; after that was done she was in good condition.

NORTON W. KIRTLAND.

Taken, subscribed and sworn to before me, this 21st day of October, A. D. 1865.

JOSHUA C. KNICKERBOCKER,
Notary Public.

And on the hearing of said cause the respondents read in evidence the following testimony to wit:

Depositions of Michael Farrell and John Coulter, on behalf of the respondent taken before J. C. Reiley, notary public, on the 11th, 13th and 25th of November, A. D. 1865, in Chicago, Ills., the said witnesses first being duly cautioned and sworn.

And the said Michael Farrell, on the eleventh day of No-
94 vember, A. D. 1865, did depose and say as follows:

Interrogatory 1st. What is your name, age, and occupation, and where do you now reside?

Ans. My name is Michael Farrell; age twenty-eight years; sailor by occupation; reside in New York city, in 7th ward.

6th int. State whether you were aboard of the bark American Union when she collided with the schooner John C. Fremont on Lake Michigan.

Ans. Yes, sir.

3rd int. Where was you stationed, and what was you doing?

Ans. I was on the look-out, on the top gallant fore sail.

4th int. What kind of morning was it?

Ans. Thick foggy morning.

5 int. How far could you see?

Ans. We could not see six rods.

6th int. Anybody on the look-out with you?

Ans. Two more.

7th int. Where were they stationed?

Ans. On the forecastle, and previous to that one was sta-
95 tioned on the royal yard.

8th int. Was they attending to their duty looking out?

Ans. Yes, sir.

9th int. Had you anything else to do but to look-out?

Ans. Nothing at all.

10th int. State whether your lights were burning or not; what kind of lights had you?

Ans. It was daylight; they had no lights; I don't remember that there was lights at all; it was broad daylight. It was in June, about the 18th.

11th int. Do you know how you were sailing?

Ans. Sailing, steering about north by east, booms on the starboard tack, the starboard tacks aboard.

12th int. State how fast you were going.

Ans. I should judge we were going eleven to twelve knots an hour.

13th int. State what precautions if any were used on board in reference to the fog.

Ans. We were stationed on the look-out, and one man ringing the bell all the while.

96 14th int. What kind of a bell is it?

Ans. A large composition bell.

15th int. State as to its sound.

Ans. It is a good bell, sounds loud.

16th int. How loud does it sound?

Ans. I should judge you could hear it that night two miles; it depends on the weather; on a day like this you could almost hear it ten miles.

17th int. State when was it you first saw the Fremont; what direction she was from you; what part of her was it you first saw; how was she going; what was done on your vessel; what was said on your vessel, and all the circumstances of the collision.

Ans. We heard a fog horn a little on our lee bow; I told the mate that I could hear a fog horn on the lee bow; he told me to ring the bell loud; at the same time we put the helm hard up; in less than one minute we could see the vessel's topmast; could not see her hull, although her jib-boom was right between our two masts, it was that foggy; then we struck the vessel; she was on the starboard tack, standing east, east southeast, something like that; after we
97 struck the vessel we went to work to lower down the sails and get rid of the vessel.

18th int. State how the wind was.

Ans. The wind was about southeast.

19th int. Did you notice her main boom at the time you hit her?

Ans. No, sir; did not have time to notice anything.

20th int. With the breeze that you had that morning, how fast would the schooner Fremont have gone if she was heading east by south or east by north or east, with the wind south by east?

Ans. I don't know her sailing qualities exactly, but I should judge she would go seven or eight knots; would be about a beam wind.

21st int. Supposing that she was sailing east southeast, with such a wind, how fast would she go?

Ans. I guess she would go about the same distance; it was an all sail breeze; she could carry all sail.

22nd int. How fast could she go if she sailed southeast?

(Question withdrawn.)

98 23rd int. Would it have been safe on such a morning as that by simply hearing a fog horn on your lee bow, without seeing the object, to have put your helm hard down?

Ans. Yes, it would have been safe enough; but every man used his own judgment, putting her helm hard up. One point would have cleared her; she was too close. Had she made one more point

than she did make she would have cleared her. She could not have been more than 200 yards off when we first heard her horn.

24th int. Would it have been good seamanship to have put your helm hard down, and attempted to have run across a vessel's bows at that distance?

Ans. No, sir; it would not.

25th int. What would have been the best seamanship, in your opinion, under all the circumstances of this case?

Ans. To put the helm up.

26th int. What would have been good seamanship on part of the Fremont, supposing she could have seen you at a thousand feet distant?

99 Ans. I think I would have put the helm down, and come round on the other tack.

27th int. Would that have avoided the collision?

Ans. It would.

28th int. Would she have had time to have done it?

Ans. She would, if she could see us that distance.

Tendered to libellant on cross-examination.

1st cross. What sail had you up?

Ans. We had full sail.

2 cross. When the order was given to put the helm hard up where was you standing, and how far from the helmsman?

Ans. I was standing on the topgallant-forecastle, 170 to 175 feet from the steersman.

3 cross. Who was at the wheel?

Ans. They called him Ellic.

4 cross. What officers were on deck?

Ans. Both mate and captain.

5th cross. How long have you been sailing?

Ans. 20 years next January.

100 6th cross. With a vessel under easy canvas, lying by the wind, how much headway would she make while you were sailing a thousand feet?

Ans. She would make 7 or 8 miles an hour sailing by the wind that morning.

7th cross. With a fog as dense as you described the fog that morning, was it prudent for a vessel under full canvas to sail through the water at the rate you were sailing?

Ans. Yes.

8 cross. Would you not be constantly in danger of colliding with some vessel under such circumstances?

Ans. No, sir; I don't think he would be in danger of colliding with any vessel.

9th cross. You say you could not see 6 rods?

Ans. Yes, sir.

10 cross. How could you see to avoid collision?

Ans. By the bell or fog-horn.

11 cross. How do you know the helm was hard up?

Ans. Because I saw the man put it up.

101 12 cross. Are you sure you saw him?

Ans. I am certain I saw him.

13 cross. Distinctly?

Ans. Yes.

14 cross. Did the vessel answer her helm?

Ans. Yes, sir.

15 cross. Now was it not put hard down?

Ans. No, sir; it was put up.

Re-direct.

29th. State how it is that you can see better on deck of a vesse that on the water.

Ans. The fog follows the water. I have seen a steamer, large steamboat, steam-frigate Niagara, 300 feet long, when I have been aboard of her, and out in a boat alongside of the bow of the steamer; could not see a man at the bow; while aboard I could see from fore to aft.

Re-cross.

Mr. Barker:

16 cross. How was the fore sail on the bark trimmed?

Ans. It was trimmed by the wind on the quarter.

17 cross. Were you forward or aft of the fore sail?

102 I was right under it.

18 cross. On which bow?

I was right amidships; sometimes on one side and sometimes on the other. I was on starboard bow starboard side when I saw the schooner, and the order was given to put helm hard up.

MICHAEL FARRELL.

Subscribed and sworn to before me this 11th day of November, A. D. 1865.

JOHN C. REILEY,
Notary Public.

And on Monday, the 13th day of November, A. D. 1865, the said John Coulter, a witness produced on behalf of the respondent, did depose and say:

1st interrogatory. What is your name, age, and occupation; and where do you now reside?

Ans. My name is John Coulter; age, twenty-six years; sailor by occupation. I reside in Chicago. I am first mate of the bark American Union.

2 int. Was you aboard of the American Union at the time

103 she collided with the schooner John C. Fremont?

Ans. Yes, sir.

3rd int. What position did you occupy, and what was you doing?

Ans. At the time I heard the horn I was walking the deck with

the captain. I was engaged looking out to see if I could hear or discover anything. I am first mate, and was in charge at the time of the collision.

4th int. Who was stationed forward, and what were they doing?

Ans. There was two men forward, one on the look-out and the other striking the bell; the third man had just come down from the royal yard aloft, and was walking from one side to the other.

5th int. What was the man doing aloft?

Ans. He went aloft to see if he could see anything; he could not see anything aloft on account of the fog.

6th int. What kind of a bell had you?

Ans. One of those steel bell; it was a large bell, as large as vessels of her class generally carry. It was a clear bell, with good, loud sound; a bell that you could hear on a morning like that five
104 or six or seven miles on the lee.

7th int. How was your vessel heading?

Ans. North by east.

8 int. How was the wind?

Ans. The wind was about south by east, two points on the quarter.

9th int. What kind of a breeze was it?

Ans. We was going along about a nine-knot breeze.

10 int. When was it that you first knew of the approach of the Fremont?

Ans. About ten minutes past five in the morning.

11 int. How were your lights at that time?

Ans. They were stationed out forward on the night-heads, where we carry them, brightly burning.

12 int. State how you knew of the approach of the Fremont. What did your captain do? What direction did you first see her? What distance was she from you when you first saw her? What portion of her did you first see? If you saw her sails, how were they trimmed? How was she heading? How fast was she
105 going? What did she do, and what did your vessel do? State all the circumstances of the collision.

Ans. I knew of the approach of the Fremont by her horn. The captain and me both started forward, and he sung out, Hard up. I run for the topgallant fore sail fast as possible. When I first saw the Fremont her main boom was off; sail was shaking. The first direction I saw her was straight ahead. I think she was probably five or six rods off when I first saw her right in front—not exactly right in front—our bow was heading for her bowsprit. The first portion of her I saw was her bow, then her jibs, her foresail; the water dashing up against her bow was the first thing I discovered. Her jibs was trimmed by the wind; main boom swinging to and fro, and sails off, shaking. I could not state for a fact how fast she was going, for I do not know how fast a vessel like that would sail. I think likely she was going six or seven miles an hour; I think by the breeze she was going that fast. Our vessel was paying off fast when she struck the Fremont forward of the main rigging. She was

coming along by the wind; main sheet was off the rigging; boom swinging to and fro; sail shaking; and when I came to look—I
106 looked over toward the port bow to see where her sailors were—I could not discover any one at her helm; could not tell which way it was. Just as I looked over our port bow our captain sung out to take in sail. I did not hear anybody speak aboard the Fremont at all. When they came on our decks and I got a chance to speak to them, the man that was at her wheel, he told me that he let go the main sheet and put the helm hard up as soon as the captain sung out to shorten sail; he sung out to shorten sail as soon as he seen her; all saw her about same time, about two seconds before she struck. I went about my business; shortened sail immediately; backed out clear of her quick as possible. I could not tell how long we stuck fast to her; stuck fast as long till we got clear of her.

(Objection to that position of the above answer which gives the conversation between the witness and the helmsman of the Fremont.)

13 int. If those on the Fremont saw your vessel a thousand feet off would they have had time to get out of the way; and if so, how would they have got out of the way?

107 Ans. I could not tell how their vessel would work; but if they saw our vessel a thousand feet off the only possible way for them to get their vessel out of the way would have been to gone in stays; they had time to do it. A vessel can do a good deal in going a thousand feet.

14th int. Would it have been good seamanship in you, at the distance when you first saw the Fremont, to have attempted to crossed her bows; and if you had done so, what would probably have been the result?

Ans. It would not have been good seamanship; and if we had attempted it she would have run into us. There is a rule for all those things, and every man has got to work by that, or he will lay himself liable.

15th int. Why could you not keep out of her way when you first saw her?

Ans. We did not have time, because they kept their vessel off, and run part of the way with us. Had they kept their vessel by the wind we would probably cleared her by her passing across our bows.

16th int. How dense was the fog that day?

108 Ans. Well, you could probably see a vessel five or six rods off; sails any ways bright; water slashing up again her; could see that first.

17th int. Do you know of anything done by your vessel that was not done to avoid the collision?

Ans. No, sir; I do not.

Cross-examination.

Mr. Barker:

1st cross. How much change was made in the course of your vessel, by changing your helm, before she struck the Fremont?

Ans. I can't exactly tell. I did not see the compass by the way the wind come. I should think she swung about two points to two points and a half. She answers her helm very quick for a large vessel.

2 cross. Would she have answered the helm as readily if it had been reversed?

Ans. Yes, sir.

3 cross. If so, would she not have passed the bows of the Fremont without a severe collision?

So far as that is concerned I could not tell. It would leave the American Union liable for all damages that occurred going
109 against the laws of seamanship.

(Libellant objects to the answer stating the law and not the fact.)

4th cross. Might she not have passed without a collision?

Ans. No, sir; she could not have passed without one or the other striking.

5 cross. Would she not have passed without striking the Fremont?

Ans. I could not swear to that. To the best of my opinion, if we had put our helm down we would probably run our head-gear together and taken out her bowsprit, and knocked her bows off.

6th cross. With the Fremont light sailing, as you say, what would have been the result to the American Union, if she had run into her?

Ans. I could not say for that. If the Fremont had been a new vessel she probably would have run over us.

Adjourned. Witness to be recalled November 13th, 1865.

110 J. C. Riley, N. P., and John Coulter, the witness, recalled for further examination November 25th, A. D. 1865:

Direct.

18 int. State where this collision occurred.

Ans. On the lower end of Lake Michigan, about abreast of Bailey's harbor, from twelve to fifteen miles off the land, perhaps more. I cannot be very accurate about that, for I was busy engaged at the time the collision occurred attending to the vessel.

19 int. Do you know whether there is any trade between Bailey's harbor, or any port near Bailey's harbor and the east shore of Lake Michigan?

Ans. No, sir; I do not; never heard of any.

20 int. How did the fog, this morning, compare with other fogs on the lakes?

Ans. It was very damp, so damp that water was dropping off the rigging and sails; it appeared to be darker and thicker than other fogs; thickest I ever saw in any place in my life.

21 int. Had you been going at the rate of four miles an hour instead of the rate you say you were going, would it have made
111 any difference in avoiding the collision after you first heard the horn from the Fremont?

Ans. No, sir; it would not. We were so close after hearing it, we was too close to clear her, that we would not have had time to clear her, if we had been going only four miles an hour.

22 int. State what was the position of the place where the man at the wheel would stand, and where was it situated.

Ans. It was situated off the cabin upon the quarter deck four steps up above the main deck.

23 int. Could a man at the wheel see under your booms?

Ans. No, he could not, unless he went to the lee quarter, and left the wheel, and get his head down as low as the sail to see anything ahead.

24 int. Could the wheel and the man at it be seen by a man standing on your lee bow, or weather bow, within eight feet of the bow?

Ans. Yes; he could be seen from the weather bow, but not from the lee bow; the sails would be between him and the man at the wheel.

Cross.

Mr. Barker:

112 7 cross-int. Assuming the schooner Fremont to have been close hauled by the wind, sheets well aft, head reaching, would she have gone in stays without first keeping her off to gather head way?

Ans. I think very likely she would. A sensible man would keep his vessel in that order, so that he could handle her at such a time in case of a fog.

(That part of answer objected to by libellant, beginning with a sensible man, and ending with in case of a fog, as not responsive to the question.)

8 x-int. Has not a vessel close hauled by the wind, with starboard tacks aboard, the right of way?

Ans. Yes, sir; she has the right of way; she has the right to keep so.

JOHN COULTER.

Subscribed and sworn to before me, and read over before signing, 25 November, A. D. 1865.

JOHN C. REILEY,
Notary Public.

It is hereby agreed by counsel that the custom-house measurement of the bark American Union is one hundred and eighty-seven feet.

J. C. REILEY,
Notary Public.

113 Endorsed: Filed Jan'y 19th, 1866. Wm. H. Bradley, cl'k.

And the following depositions were further taken on behalf of the respondents, to wit:

On the 24th day of November, A. D. 1865, Benjamin S. Wolvin, first being duly cautioned and sworn, did before Azariah T. Galt, notary public, depose and say:

1st interrogatory. What is your name, age, occupation, and place of residence?

Ans. My name is Benjamin S. Wolvin; my age is thirty-three; I am master mariner; I live in Chicago.

2nd int. How long have you been a mariner, and how long master of a vessel?

Ans. I have been mariner nineteen years; I have been master of a vessel twelve years.

3rd int. State what position you occupied on the barque American Union, at the time she collided with the Fremont.

Ans. I was master of her.

4th int. State whereabouts the collision occurred.

114 Ans. On Lake Michigan, abreast of Bayley's harbor, and about the center of the Lake.

5th int. State how far and what direction from Bailey's harbor.

Ans. Bayley's harbor bore about west, I think, and we were about twenty-five miles from land.

6th int. State when the collision occured, what day, and what hour of the day, the character of the weather, how your vessel was heading, how long she had been heading in that way, the direction of the wind, the speed at which you were sailing, the tack you were on, who was on the look-out on your vessel, where were they stationed, what were they doing, how long they had been stationed; and if you had lights, what kind of lights had you, what were you doing, what sails had you up, who first saw the Fremont, what distance was she from you when she was first seen, and in what direction, how was she heading, how fast was she sailing, how were her sails set, what did you do when you first saw her, what did she do, and how did the collision occur, and state all the circumstances?

Ans. The collision occurred on Sunday, the eighteenth day of June, 1865, at about five o'clock in the morning; there was a dense

115 fog; my vessel was heading north by east; she had been heading in that way for about two hours; the wind was south by east; we were going about nine miles an hour; the wind was on our starboard side, and we were running free; all the watch on our vessel was on the look-out, except the man at the wheel; three of them were on the top gallant fore sail. The mate was walking on deck aft on the starboard side; they were keeping a sharp look out, and listening; two of them had been there since four o'clock, and one had been there ten or fifteen minutes, having come down from the royal yard, where he had been stationed; we had the usual light, a red light, on the portside, and green light on the starboard side; I was walking on the deck, forward of the cabin, watching and listening to see if I could hear any bells or horns, or discover any; we had all the

sails up; I could not say who first saw the Fremont; I should think she was five or six rods from us, when she was first seen right ahead of us, or a very little on the lee bow; she was heading about east; she was sailing six or seven miles an hour; her jibs and fore sail were trimmed by the wind, and her main sail was off. When I first saw her, I put our wheel hard up, and then we collided with her immediately afterwards.

116 7th int. How were the lights burning?

Ans. Brightly.

8th Int. How far could you see an object that night from your vessel?

Ans. Five or six rods.

9th int. What kind of a fog signal had you; what was its capacity for sound; do you know anything better than you had, which you could have had, and if not, why not?

Ans. We had a good large bell for fog signal; its capacity for sound was good; it could be heard about four miles to the leeward on a morning like that. I do not know anything better which we could have had.

10th int. How did the Fremont bear from your bow, as near as you can tell, when you first saw her?

Ans. About north.

11th int. What part of her bore north?

Ans. Her midships, probably a little west of north, just where we hit her.

12th int. How did your vessel answer her helm?

Ans. She fell off when the wheel was put up but a little; the distance was so short between the two vessels that there was not

117 sufficient time to change our course much before she collided with the Fremont.

13th int. Had you been going at the rate of four miles an hour when you first discovered the Fremont instead of nine miles an hour, would it have made any difference?

Ans. It would not; we were too close to keep clear of her.

14th int. Had you put your helm down instead of up would you have avoided her and would it have been good seamanship so to have done?

Ans. We would not have avoided her by putting the helm down instead of up; it would not have been good seamanship so to have done.

15th int. If the Fremont had been sailing east by north or east by south or east, and those on board of her saw your vessel sailing as she was, nine hundred or a thousand feet away, what ought they to have done on such a morning as that?

Ans. They should have put their vessel about, or in other words, tack ship.

16th int. Would they have had time to have done so?

Ans. Yes, ample time.

118 17th int. Was there anything to have prevented them doing so?

Ans. There was not.

18th int. Do you know of anything which you could have done which you did not do to avoid the collision; if so, what was it?

Ans. I know of nothing; I did all in my power to prevent it.

Cross-examination.

By Joseph N. Barker, esq:

1st x-int. What interest had you in the barque at the time of the collision?

Ans. One-fourth interest.

2nd x-int. If you had put your helm hard down when you first saw the schooner Fremont, would you not have come to alongside of the Fremont or passed her bows?

Ans. We would have struck her on the starboard bow instead of midships.

3rd x-int. Assuming the Fremont to have been close hauled by the wind sheets well aft, head reaching, would she have gone in stays without first keeping her off to gather headway?

119 Ans. I think she would.

4th x-int. How long would it have taken to put her in stays?

Ans. Probably a minute and a half or two minutes.

5th x-int. Was there any sea on at the time?

Ans. Not a great deal.

6th x-int. Assuming she was close hauled by the wind lying by, was it not proper for her to keep directly on her course?

Ans. It was not.

7th x-int. Has not a vessel, by the wind with her starboard tacks aboard, the right of way? and is it not possible for her to keep on in that way in a fog?

Ans. Not if they can do anything to avoid a collision; in order state of atmosphere she has the right of way, but not then if she can avoid a collision; when a collision becomes imminent it is the duty of each vessel to do all they can to avoid a collision, no matter who has the right of way.

8th int. Could you tell the course of the Fremont when

120 you gave the order to put the helm hard up?

Ans. No, not exactly the course, very near it; could not see her plain enough to tell the exact course.

Re-examination.

By Mr. Rae:

How long after you heard the horn blow did you order the wheel hard up?

Ans. Immediately.

Re-cross-examination.

1st x-int. What watch was on deck?

Ans. The port watch, called at four o'clock.

2nd x-int. How long had the other watch been below, and how long had you been on deck?

Ans. About hour they had been below; I had been up all night.

BENJAMIN S. WOLVIN.

And W. A. Harrington was by the said A. T. Galt, notary, first duly cautioned and sworn to testify the truth &c., and did thereupon depose and say as follows:

1st int. What is your name, age, occupation, and place of residence?

Ans. My name is W. A. Harrington; my age is twelve years;
121 my occupation is principally sailing. I live in Chicago.

2nd int. Were you on the barque American Union when she collided with the Fremont; and if so, in what capacity?

Ans. I was; I was before the mast.

3rd int. What were you doing, and where were you stationed at and before the time of the collision?

Ans. I was on the look-out on the top gallant forecastle; at the time of the collision I was walking from the lee side to the weather side.

4th int. How many men beside yourself were on the look-out, where were they stationed, and what were they doing?

Ans. There were two; they were stationed on the topgallant forecastle, and one of them was ringing the bell at the time.

5th int. What kind of a morning was it?

Ans. There was a dense fog.

6th. int. How far could you see?

Ans. Not over five or six rods.

7th int. What kind of a bell had you, and how far could it
122 be heard?

Ans. A large-sized bell, and could be heard three or four miles.

8th int. Do you know anything for a fog signal that would have been better than you had; if so, what is it?

Ans. I do not.

9th int. State how you were heading, the direction of the wind, how were your sails trimmed, on which side of the vessel; how fast you were going, what lights, if any, you had out, and how they were burning, when and how you first discovered the Fremont, how long after you discovered her before you saw her, what direction was she from you when you first saw her, how far away was she, how was she heading, how fast was she sailing, how were her sails trimmed, what did you do when you first discovered her, what was done on your vessel, and how soon after you first discovered her was it done. State all you know about the collision.

Ans. We were heading north by east; the wind was south by east;

our sails were trimmed on the port side; we were going about
123 nine miles an hour; we had the usual lights out, the red light on the port side and the green on the starboard side; they were both burning; we discovered the Fremont a little after five in the morning on the lee bow; we heard her horn; we saw her immediately after we discovered her; the Fremont was very near ahead of us when we first saw her; she then was three, four, or five rods from us; she, the Fremont, was heading about east; she was sailing about five or six miles an hour; her fore sail and jibs were by the wind and her main sail was off; I got off the forecastle and stood by the fore mast when I first saw the Fremont; as soon as we heard the horn of the Fremont the captain ordered our wheel to be put hard up; I was on the look-out and heard the horn, and reported it, and immediately afterwards the captain of our vessel ordered our wheel to be put hard up, and then the collision occurred.

10th int. If you had been going four miles an hour would it have made any difference in getting out of the Fremont's way after you knew of her approach?

Ans. It would not.

124 11th int. Would it have been good seamanship to have put your helm down when you knew of her approach?

Ans. Yes, sir.

12th int. Would it have been good seamanship to have put it up?

Ans. No, sir.

13th int. What would have been the effect of putting the helm up?

Ans. We would not have cleared her, we would have hit her stern, and to put it down we would have hit her starboard bow.

14th int. How did you put it?

Ans. Hard up.

15th int. Was it good seamanship to put it up?

Ans. I suppose so.

16th int. What do you mean then in swearing in your answer to the twelfth interrogatory that it was not good seamanship to put it up?

Ans. I got a little turned around in that question; I was not thinking then.

17th int. Which was the best seamanship to put the wheel
125 hard up or put it hard down?

Ans. To put it hard up.

18th int. Do you know of anything that could have been done aboard of your vessel to avoid the collision, which was not done?

Ans. No, sir.

19th int. If those on board of the Fremont saw your vessel eight hundred or nine hundred feet from her, how could she have avoided the collision?

Ans. By going about and tacking ship.

Cross-examination.

By Mr. Barker:

1st x-int. How old are you?

Ans. Eighteen.

3rd x-int. How long have you been sailing?

Ans. Between three and four years.

4th x-int. In what capacity?

Ans. Before the mast.

5th x-int. How long with the captain of the barque?

Ans. All the while except about two months.

6th x-int. Are you a relative of the captain; and if so, what?

126 Ans. I am a brother-in-law.

7th x-int. Suppose the Fremont was heading close hauled by the wind, only head reaching, could she have gone into stays and changed her course while you were sailing a thousand feet?

Ans. I don't know about that; I am not good enough seaman to tell?

8th int. When the order was given to put the helm hard up was it done?

Ans. Yes, sir.

9th x-int. How do you know?

Ans. I heard the captain order the wheel to be put hard up and looked around as he gave the order and saw the man put it up.

10th x-int. Did you distinctly see the man do it?

Ans. I saw him put the last few strokes of the wheel up.

11th x-int. About how many feet from the bow of the vessel did you stand?

Ans. About eight feet from the bow of the vessel.

12th x-int. How long did you hear the horn of the Fremont

127 before you saw her?

Ans. It could not have been more than six or seven seconds.

Re-direct examination.

By Mr. Rae:

1st int. How is the wheel of the barque American Union located?

Ans. It is situated about four feet above the main deck and three or four feet from the stern.

2nd. int. Can you see under the boom of the sails standing at the wheel?

Ans. No; not to the leeward.

Re-cross examination.

By Mr. Barker:

1st int. Were any men below, and did any come up on deck after they heard the horn blow, and before the collision?

Ans. Immediately after the men heard the horn we called the men, four men and the second mate.

2nd int. Did they get up before the collision?

Ans. Three of them did; one did not.

Re-re-direct examination.

By Mr. Rae :

128 1st int. Did the men come up before or after the captain ordered the wheel hard up?

Ans. I think they came up after the captain ordered the wheel hard up.

W. A. HARRINGTON.

Further deposition of Benjamin S. Wolvin.

1st int. What is your name, age, occupation, and place of residence?

Ans. My name is Benjamin S. Wolvin; I have been sworn in this case before; I was master of barque American Union; this collision between barque American Union and the scow John C. Fremont, on Lake Michigan, about 25 miless eastward of Bayle's harbor, about the center of the lake; we observed the first land marks in the afternoon about 2 o'clock, about 9 hours after the collision. After seeing these landmarks I found we were just about the position in the lake I thought we were; we left Chicago at ten o'clock in the forenoon with a fresh breeze from the southard, steered north by east half east; the fog came on shortly after leaving Chicago; the wind slacked up about four o'clock the next morning and we changed our course to north by east, and the collision occurred about five o'clock in
129 the morning; there are no courses where the collision occurred or anywhere near running at right angles to our course; vessels will sometimes stand across beating up and down; there is no direct trade from Bayle's harbor to any point on the east shore. The course and place where I was at the time of the collision is the usual place and course for grain vessels bound down; my vessel had a bell; I think most of the small lumber vessels the size of the Fremont have no bells; lumber vessels don't usually have bells. Those built for the lumber trade don't have bells as a general thing. I only know one or two in the lumber trade that have bells; a vessel like the Fremont with her fore sail and jib trimmed by the wind and main sail off, wind south southeast and the vessel steering east southeast, the vessel would fall off with the wind free. She could not sail by the wind that way. The Fremont, with her sails trimmed as I have described, wind south by east, and the Fremont running east by south, or east, with a nine, ten, or eleven-knot breeze, she would sail six or seven miles an hour, and she would go faster rather than slower. There is no custom on the lakes to shorten sails in a fog so that you
130 cannot see six rods ahead in the day time, running 9 knots an hour in the open free lake and on his course. (Answer as to the custom objected to by proctor for libellant.) It is not usually done. In a fog the horn ought to be sounded and the bells tolled. I have it sounded and tolled on my boat every twenty seconds. We usually sound one on the port tack, and then fifteen or twenty seconds after, we sound another on the port tack, and we then sounded two distinct blasts on the starboard side fifteen or twenty seconds after, and then two more on the starboard after the same interval.

Cross-examination.

By Mr. Barker:

I don't know that it would have been more judicious and better seamanship to have shortened sail. I had a small interest in the vessel.

B. S. WOLVIN.

Depositions by Benjamin Hammond.

1st int. What is your name, age, occupation, and place of residence?

Ans. My name is Benjamin Hammond; my age is 36; I live in Buffalo. I am a sailor. I have been master of a vessel 14
131 years. I have been master of schooner and barques for the last ten years, first-class vessels, barques. I was brought up to the business. I have followed it since I was a boy. I am now master of the barque Charles K. Nims.

Int. Is a young man, 21 years of age, following the business of a mariner for 6 years, and who ships on board of a vessel as steward, and who has not served as first, second mate, or master of a vessel, a proper person to be put in command or in charge of a vessel navigating the waters of Lake Michigan off Bayless harbor in a dense fog, with the wind blowing from 9, 10 to 11 knots an hour? And if he is not, what reasons have you for saying so?

(Question objected by Mr. Barker, proctor for libellant.)

Ans. He is not a man I would trust with the deck at such a time. It requires a man of more experience. He is not a competent man.

Int. If, in such a fog, the vessel should be sailing east by south, or about east, and the wind should be south by east, or south southeast, and to 25 miles east of Bayless harbor, and the officer of the deck should hear a bell tolling on his starboard bow, what
132 orders ought to have been given, and how soon ought they to have been given, and what ought he to have concluded from the sound of the bell, as to the character and course of the vessel sounding the bell?

Ans. I should either go about with my vessel, or go before the wind, and do it immediately, without consuming time to call the master on deck, and a competent man would do this. He would suppose there was a grain vessel bound down the lake, that was approaching him. There is not much difference between a bell and a fog horn. You can hear the horn nearly as far as the bell.

Int. The schooner Fremont, sailing east by south, or east by north, with the wind south by east, or south southeast, the jibs set and the fore sails set, with the breeze blowing from 9 to 11 hours an hour, how fast would she sail?

Ans. About six miles an hour, and she could not sail much slower.

Int. Is there any custom on the lakes, on the open lake, about 25 miles east of Bayless harbor, for grain vessels to shorten sail in a dense fog?

(Question objected to by Mr. Barker.)

133 Ans. Not that I know of.

Int. Do vessels passing up and down expect to meet vessels crossing from Bayless harbor?

Ans. No; vessels in the lumber trade do not usually have bells.

Int. Would it have been good seamanship for the barque American Union, when a the distance of 1,000 to 2,000 yards from the Fremont, the barque going 9 and the schooner 6 miles an hour, the barque going north by east, and the schooner east by half south or east, or the barque was going north by east half east, and she was heading for the schooner's cat-heads, which would have been the best seamanship, to have ported her helm, and to attempt to cross the schooner's bows, or to go under her stern?

Ans. I should have put the helm up, and gone under the schooner's stern.

Cross-examination.

By Mr. Barker:

I am in command of a large barque in the grain trade.

134 Int. Is it usual for a vessel on the starboard tacks, sailing close by the wind, waiting for the fog to clear up, to change her course for a vessel with the wind free; and has not such a vessel the right of way, and may she not properly keep on her way?

Ans. It is not usual in clear weather. The vessel has the right of way on the starboard tack, and may properly keep on her way in clear weather.

Re-examination.

By Mr. Rae:

Int. Is it customary to keep on your course when you have the technical right of way in a place where you are crossing the well-known path of other vessels, the vessel which has the right of way is sailing in a path which is not usual and not well known?

(Question objected to by Mr. Barker.)

Ans. It is not customary with me. It would not be good seamanship.

B. HAMMOND.

Depositions by C. E. Brown.

1st int. What is your name, age, occupation, and place of residence?

Ans. My name is C. E. Brown; age is 32; my occupation is captain of a vessel; I live in New York State. I have been cap-

135 tain of first-class vessels for about six years. I was brought up to the business of sailing.

Int. Is a young man 21 years old, following the business of a mariner 6 years, and who ships on board of a vessel as steward, and who has not served as first, second mate, or master of a vessel, a proper person to be put in command or in charge of a vessel navigating

the waters of lake Michigan off Bayless harbor, in a dense fog, with the wind blowing from 9, 10 to 11 knots an hour? And if he is not, what reasons have you for saying so?

(Question objected by Mr. Barker.)

Ans. I should think not; he has not experience enough. He has not learned to command.

Int. If in such a fog the vessel should be sailing east by south, or about east, and the wind should be south by east or south southeast, and 8 to 25 miles east of Bayless harbor, and the officers on deck should have a bell tolling on his starboard bow, what orders ought to have been given, and how soon ought they to have been given, and what ought he to have concluded from the sound of the bell,
136 as to the character and course of the vessel sounding the bell?

Ans. He should have ordered the helm to be put up and keep the vessels off, and then called his superior officer. He should have concluded there was a vessel coming down on to him, and that there was danger.

Int. The schooner Fremont, sailing east by south or east by north, and the wind south by east or south southeast, the jibs and the fore sails set, and the wind blowing from 9 to 11 knots an hour, how fast would she sail?

Ans. If she was light, about 7 miles an hour; I should think not much less than that if she was light.

Int. Is there any custom on the open lake about 25 miles east of Bayless harbor for grain vessels to shorten sail in a dense fog?

(Question objected to by Mr. Barker.)

Ans. No, sir; it is according to a person's own notion.

Int. Do vessels passing up and down expect to meet vessels crossing from Bayless harbor?

137 Ans. Yes; we meet vessels beating up to Chicago with a head wind. If it is a great distance from land we don't meet them.

Int. Would it have been good seamanship for the barque American Union, when 1,000 to 2,000 yards from the Fremont, and the barque going 9 miles and the schooner 6 miles an hour, the barque going north by east and the schooner going east by half south or east, or the barque was going north by east half east, and she was heading for the schooner's cat-heads, which would have been the best seamanship, to have ported her helm and to attempt to cross the schooner's bows, or to go under the schooner's stern?

Ans. I should have put the helm starboard and gone under her stern, if I had seen her in time.

Cross-examination.

By Mr. Barker:

I am on the barque "City of Chicago," a large grain vessel.

Int. Is it usual for a vessel on the starboard tack, sailing close by the wind, waiting for the fog to clear up, to change her course for

a vessel, with the wind free; and has not such a vessel the
138 right of way, and may she not properly keep on her way?

Ans. It is not usual in clear weather to do it; but in thick weather, when there is danger, they should try to keep away from it. The vessel on the starboard tack has the right of way in clear weather, and may properly keep on her way.

Int. Should she not keep on her way at a time when a vessel can be seen from a 1,000 to 2,000 feet?

Ans. I should get out of the vessel's way if I could; and I would not expect the vessel to get out of the way, if I could see her. You can see further from the wind than against the wind.

Int. Have you any personal knowledge of the young man mentioned in your direct examination?

Ans. I have not.

Int. Are there any exceptions to the rule, and are not many young men of 6 years' experience fully as well qualified to command a vessel as many masters of twenty years' experience?

139 Ans. I should not want to trust them.

Re-examination.

By Mr. Rae:

Int. Is it customary to keep on your course when you have the technical right of way, in a place where you are crossing the well-known path of other vessels, and the vessel which has the right of way is sailing in a path which is not usual, and which is not well known?

Ans. I should think it is right for me to keep on my course going down the lake. The other vessel should keep out of the way.

C. E. BROWN.

Depositions by A. W. Reed.

1st int. What is your name, occupation, and place of residence?

Ans. My name is A. W. Reed; am of lawful age; I live in New York. I am a sailor; have been sailing for sixteen years, and have always sailed on first-class vessels; I have been captain eight years.

Int. Is a young man 21 old, following the business of a mariner 6 years, and who ships on board of a vessel as steward, and
140 who has not served as first, second mate, or master of a vessel, a proper person to be put in command or charge of a vessel navigating the waters of Lake Michigan, off Bayless harbor, in a dense fog, with the wind blowing from 9, 10 to 11 knots an hour? If he is not, what reasons have you for saying so?

(Question objected to by Mr. Barker.)

Ans. I should not consider him so. I should think he lacked experience.

Int. If, in such a fog, the vessel should be sailing east by south, or about east, and the wind should be south by east, or south south-

east, and 8 to 25 miles east of Bayless harbor, and the officer of the deck should hear a bell tolling on his starboard bow, what orders ought to have been given, and how soon ought they to have been given; and what he ought to have concluded from the sound of the bell as to the character and course of the vessel sounding the bell?

Ans. I should put my wheel up and get the vessel off before the wind as soon as possible. He should have concluded it was a large vessel running, as small vessels don't usually carry bells.

141 Int. The schooner Fremont, sailing east by south, or east by north, with the wind south by east, or south southeast, the jibs and fore sail set, the wind blowing from 9 to 11 knots an hour, how fast would she sail?

Ans. In the neighborhood of six or seven miles an hour. She would not go less than six miles an hour; and I think more.

Int. Is there any custom on the open lake about 25 miles east of Bayless harbor for grain vessels to shorten sail in a dense fog?

(Objected to.)

Ans. I don't know of any such custom.

Int. Do vessels passing up and down expect to meet vessels crossing from Bayless harbor?

Ans. We do not expect to find any vessels crossing there.

Int. Would it have been good seamanship for the barque American Union, at a distance of 1,000 to 2,000 yards from the Fremont, the barque going 9 miles and the schooner 6 miles an hour, the schooner east, half south, or east, and the barque going north by east, or the barque was going north by east, half east, and she was heading for

142 the schooner's cat-heads, which would have been the best seamanship, to have ported her helm and to have attempted to cross the schooner's bows, or to go under her stern?

Ans. I should have undertook to go under her stern as the safest.

Cross-examination by Mr. Barker declined.

A. M. REED.

And the said Azariah S. Galt, notary, certifies that the said witnesses were duly sworn, and respectively subscribed to their depositions.

Endorsed: Filed July 12, 1866. Wm. H. Bradley, cl'k.

And on the 29th day of July, A. D. 1866, came R. Rae, proctor for respondents, and filed with the clerk of the said court his bond on appeal in said entitled cause, which bond is in the words and figures following, to wit:

United States District Court for the northern district of Illinois.

Know all men by these presents, that we, Nathan C. Winslow, of

143 the city of New York, in the State of New York, and George L. Newman, of the city of Buffalo, in the State of New York, and Wiley M. Egan, of the city of Chicago, in the State of Illinois, are held and firmly bound unto Asa E. Curtis, in the sum of

fifteen thousand dollars, for the payment whereof, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated this 26 day of July, 1866.

Whereas, the above-named Nathan C. Winslow, and one Hezekiah J. Winslow, claimants of the barque American Union, now in court, have taken an appeal to the Circuit Court of the United States for the northern district of Illinois, to reverse a decree rendered in said District Court, in a case wherein Asa E. Curtis was libellant, and Nathan C. Winslow and Hezekiah J. Winslow were claimants and respondents, now, therefore the condition of this obligation is such that if the above-named Nathan C. Winslow and Hezekiah J. Winslow shall prosecute such appeal with effect, and answer all costs if they shall fail to make their said plea, then this obligation
144 shall be void, otherwise to remain in full force and effect.

[SEAL.] NATHAN C. WINSLOW.
[SEAL.] GEO. L. NEWMAN.
[SEAL.] WILEY M. EGAN.

CITY OF BUFFALO, *Northern District of New York, ss:*

George L. Newman, being duly sworn, doth depose and say that he is actually worth over and above all his debts and property exempt from execution the sum of thirty thousand dollars.

GEO. L. NEWMAN.

Subscribed and sworn before me this 26 July, 1866.

GEO. GORHAM,
United States Commissioner for the Northern District of New York, at Buffalo.

CITY OF BUFFALO, *Northern District of New York, ss:*

Nathan C. Winslow, being duly sworn, doth depose and say that he is actually worth, over and above all his debts and prop-
145 erty exempt from execution, the sum of thirty thousand dollars.

NATHAN C. WINSLOW.

Subscribed and sworn before me this 26th July, 1866.

GEO. GORHAM,
United States Commissioner for the Northern District of New York, at Buffalo.

NORTHERN DISTRICT OF NEW YORK, *ss:*

On this 26th day of July, 1866, before me personally came Nathan C. Winslow and George L. Newman, to me known to be the same persons described in, and who executed the foregoing instrument, and severally acknowledged the execution of the same for the uses and purposes therein mentioned.

Witness my hand and seal of office, at Buffalo, the day and year first above written.

[SEAL.] GEO. GORHAM,
United States Commissioner for the Northern District of New York.

I approve the security.

J. N. BARKER, *Proctor for Libellant.*

Endorsed: Approved. Thomas Drummond; and filed July 29th, 1866. Wm. H. Bradley, cl'k.

146 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, William H. Bradley, clerk of the District Court of the United States for said district, hereby certify the above and foregoing to be a true and correct transcript of the record of all the proceedings had in said court, in the cause wherein Asa E. Curtis is libelant, and the barque American Union is respondent, as appears from the records of said court, remaining in my custody, made up under the fifty-third rule in admiralty of the Supreme Court of the United States.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in the city of Chicago, this eighteenth day of August, in the year of our Lord one thousand eight hundred and sixty-six, and of our independence the ninety-first year.

[SEAL.] WM. H. BRADLEY, *Cl'k.*

[5-ct. int. rev. stamp, cancelled.]

Endorsed: Filed August 18th, 1866. Wm. H. Bradley, clerk.

147 On this day, to wit, the 8th day of October, in the adjourned October term, A. D. 1867, of said Circuit Court, in the record of the proceedings thereof in said entitled cause, is the following entry, to wit:

Appeal.

ASA E. CURTIS
vs.
THE BARQUE AMERICAN UNION.

Now come the parties, by their proctors, and by agreement this cause is set down for hearing on the record of the pleadings and proofs, as certified from the District Court, and after hearing the same, together with the arguments of the respective advocates, the court not being now fully advised in the premises, takes time to consider.

On this day, to wit, the 4th day of November, in the adjourned October term, A. D. 1867, of said court, in the record of the proceedings of said court in said entitled cause, is the following entry, to wit:

Appeal.

ASA E. CURTIS
vs.
THE BARQUE AMERICAN UNION.

148 The court having considered, and being fully advised upon the matters heretofore submitted herein, affirms the decree of the District Court, and it appearing from the record that a decree was rendered in the District Court, on the twenty-first day of July, A. D. eighteen hundred and sixty-six, in favor of the libelant, for the sum of seven thousand one hundred and sixteen dollars damages, together with cost, it is thereupon ordered, adjudged, and decreed by the court that the respondent pay to the libelant the said sum of seven thousand one hundred and sixteen dollars, the amount of the decree aforesaid, together with the sum of five hundred and forty-nine dollars and eleven cents, the interest on said decree, from the said twenty-first day of July, A. D. eighteen hundred and sixty-six, amounting in all to the sum of seven thousand six hundred and sixty-five dollars and eleven cents, together with the costs herein to be taxed, and also the costs decreed in the District Court. And it is further ordered, that a summary judgment be, and the same is hereby, accordingly entered against Hezekiah J. Winslow, as prin-
149 cipal, and Wiley M. Egan, as surety, in the sum of fourteen thousand dollars, being the amount of the stipulation given to the marshal, upon the arrest of the defendant. And it is further ordered by the court, that unless said decree for damages and costs be paid within ten days, execution issue against the respondent and its stipulators therefor, to the marshal of this district, for the sum of fourteen thousand dollars, the amount of the penalty in the stipulation entered into, to be discharged and satisfied upon the marshal making thereon the decree for damages, interest thereon and costs.

On this day, to wit, the 14th day of November, A. D. 1867, in said October term of said court, in the record of the proceedings thereof, in said entitled cause, is the following entry, to wit:

Appeal.

ASA E. CURTIS
vs.
THE BARQUE AMERICAN UNION.

Now comes the respondent, by its proctor, and prays an appeal to the Supreme Court, which is granted by the court, upon the
150 respondent entering into bond in the sum of ten thousand dollars, with security, to be approved by the court, to pay the decree for damages and costs herein.

On this day, to wit, the 14th day of November, A. D. 1867, came the claimants of said barque American Union, by their proctor, and filed in said clerk's office their appeal bond in said entitled cause, which said bond is in the words and figures following, to wit:

151 Circuit Court of the United States for the northern district of Illinois, in the seventh circuit.

Appeal bond.

THE BARQUE "AMERICAN UNION," N. C. Winslow and Hezekiah J. Winslow, claimants and appellants, *vs.* ASA E. CURTIS, libellant and appellee. } In admiralty.

UNITED STATES OF AMERICA:

Know all men by these presents that we, N. C. Winslow and Hezekiah Winslow, as principals, and Wiley M. Egan and George C. Finney, both of the city of Chicago, county of Cook, and State of Illinois, as sureties, are held and firmly bound unto the above-named Asa E. Curtis in the sum of ten thousand dollars, to be paid to the said Asa E. Curtis, for the full payment of which, well and
152 truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this fourteenth day of November, A. D. 1867.

Whereas the above-named appellants have prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above entitled cause, by the United States Circuit Court for the northern district of Illinois:

Now, therefore, the condition of this obligation is such that if the above-named appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make good their appeal, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

[SEAL.] NATHAN C. WINSLOW,
By W. M. EGAN, *his Att'y in fact.*
[SEAL.] H. J. WINSLOW,
By W. M. EGAN, *his Att'y in fact.*
[SEAL.] W. M. EGAN.
[SEAL.] GEO. C. FINNEY.

153 UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Wiley M. Egan and George C. Finney, being duly sworn, do depose and say each for himself, that he is worth the sum of ten thousand dollars, over and above his just debts and liabilities.

W. M. EGAN.
GEO. C. FINNEY.

Subscribed and sworn to before me this 14th day of November, A. D. 1867.

[SEAL.] WM. H. CONDON, *Notary Public.*

Approved:

THOMAS DRUMMOND.

Endorsed: Filed Nov. 14, 1867. Wm. H. Bradley, clerk.

154 NORTHERN DISTRICT OF ILLINOIS, *ss*:

I, William H. Bradley, clerk of the Circuit Court of the United States for said northern district of Illinois, do hereby certify the foregoing transcript, embracing one hundred and fifty-three pages, to be a true, full and perfect copy from the record of all the proceedings which have been had in said court in said case of Asa E. Curtis against the barque American Union, as the original of the same now remains in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in Chicago, in said northern district, this twenty-third day of December, A. D. 1867.

[SEAL.] WM. H. BRADLEY, *Clerk*.

[5-ct. U. S. rev. stamp.]

155 *Citation.*

Circuit Court of the United States for the northern district of Illinois.

UNITED STATES OF AMERICA, *ss:*

By the Honorable Thomas Drummond, judge of the Circuit Court of the United States for the northern district of Illinois, in the seventh circuit.

To Asa E Curtis:

Whereas, N. C. Winslow and Hezekiah J. Winslow, claimants of the barque American Union, her tackle, &c., have lately appealed to the Supreme Court of the United States from a decree lately rendered in the Circuit Court of the United States for the northern district of Illinois, in the seventh circuit, made in favor of you the said Asa E. Curtis against the said barque American Union, her tackle, &c., and has filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court at the
156 city of Washington, on the first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of Chicago, in the northern district of Illinois, in the seventh circuit, this 14th day of November, in the year of our Lord A. D. 1867, and of the independence of the United States the ninety-first.

THOMAS DRUMMOND.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

F. F. Burlock, being duly sworn, says that he served on Joseph N. Barker, esq., the attorney of record of the said appellee, Asa E. Curtis, on the 14th day of November, A. D. 1867, a copy of the citation filed in this cause with the clerk of the Circuit Court, in and for the northern district of Illinois, on said 14th day of Novem-
157 ber, A. D. 1867, by delivering said copy of said citation to

the said Joseph N. Barker, attorney as aforesaid, at his office, in said city of Chicago.

F. F. BURLOCK.

Sworn to before me this 14 day of November, A. D. 1867.
[SEAL.] W. H. CONDON,
Notary Public.

Endorsed: No. 386. U. S. Circuit Court, nor. dist. of Illinois. The Barque American Union *et al.*, appellants, *v.* Asa E. Curtis, appellee. Citation. Filed 30 December, 1867.

REC. 228—6